

09

**COMMITTEE
ON EXTERNAL AFFAIRS
(2020-2021)**

SEVENTEENTH LOK SABHA

MINISTRY OF EXTERNAL AFFAIRS

**INDIA AND INTERNATIONAL LAW INCLUDING EXTRADITION
TREATIES WITH FOREIGN COUNTRIES, ASYLUM ISSUES,
INTERNATIONAL CYBER-SECURITY AND ISSUES OF FINANCIAL
CRIMES.**

NINTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

SEPTEMBER 2021/BHADRAPADA, 1943 (Saka)

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CRIMES.**

Presented to Hon'ble Speaker on 10 September 2021

Presented to Lok Sabha on -----, 2021

Laid on the Table of Rajya Sabha on 11 August, 2021



**LOK SABHA SECRETARIAT
NEW DELHI**

SEPTEMBER 2021/BHADRAPADA, 1943 (Saka)

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COMPOSITION OF THE COMMITTEE ON EXTERNAL AFFAIRS (2020-21)

1. Shri P.P. Chaudhary, Chairperson

Lok Sabha

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4. Shri Kalyan Banerjee
5. Kunwar Pushpendra Singh Chandel
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18. Shri Manne Srinivas Reddy
19. Shri Rebati Tripura
20. Vacant[§]
21. Vacant*

Rajya Sabha

22. Shri K. J. Alphons
23. Smt. Jaya Bachchan
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26. Shri Ranjan Gogoi
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28. Shri Kapil Sibal
29. Shri Abdul Wahab^{@@}
30. Shri Brij Lal
31. Vacant[@]

Secretariat

1. Shri P.C.Koul - Additional Secretary
2. Dr. Ram Raj Rai - Director
3. Shri Paolienlal Haokip- Additional Director
4. Ms. Smita Singh - Assistant Committee Officer

[§] Shri Ram Swaroop Sharma passed away on 17 March, 2021.

* Smt. Meenakshi Lekhi ceased to Member of the Committee on her appointment as Minister w.e.f. 07.07.2021.

Shri Swapan Dasgupta resigned on 17.03.2021 and has been re-nominated w.e.f. 11.06.2021.

@@ Shri Abdul Wahab retired on 21.03.2021 and has been re-nominated w.e.f. 11.06.2021.

@ Shri Jyotiraditya M. Scindia ceased to be Member of the Committee on his appointment as Cabinet Minister w.e.f. 07.07.2021.

INTRODUCTION

I, the Chairperson of the Committee on External Affairs, having been authorized by the Committee to present the Report on their behalf, present this Ninth Report of the Committee on External Affairs (2020-21) on the subject ‘India and International Law including Extradition Treaties with Foreign Countries, Asylum Issues, International Cyber-Security and Issues of Financial Crimes’.

2. The Committee selected the subject for detailed examination during the year 2020-21. The Committee took oral evidence of the representatives of the Ministry of External Affairs, Ministry of Law & Justice, Ministry of Home Affairs and Ministry of Ministry of Electronics & Information Technology on 11 August, 2020; 27 August, 2020 and 11 November, 2020. Further, the Committee sought views of the two experts, Dr. Gulshan Rai and Prof. Manoj Sinha on the subject in accordance with Rule 331 (L) of the Rules of Procedure and Conduct of Business in Lok Sabha on 17 December, 2020.

3. The Report was considered and adopted by the Committee at their Sitting held on 5 August, 2021. The Minutes of the Sitting of the Committee are appended to the Report.

4. The Committee wish to express their gratitude to the Ministry of External Affairs, Ministry of Law & Justice, Ministry of Home Affairs and Ministry of Electronics & Information Technology and the two experts for placing material information as well as tendering evidence and views before the Committee.

5. For facility of reference, the Observations/Recommendations of the Committee have been printed in bold letters in the Report.

NEW DELHI
5 August, 2021

Sravana, 1943 (Saka)

P.P. CHAUDHARY,
Chairperson,
Committee on External Affairs

CHAPTER 1: GENERAL OVERVIEW OF INDIA AND INTERNATIONAL LAW

1.1 Article 51 of the Constitution of India enjoins upon the Republic to promote international peace and security, to maintain good relations with other nations, to settle international disputes by peaceful means. The Government is responsible for implementation of the international treaties and agreements to which India is a party. With India's rising stature in global affairs and the country's increasing engagements, it is pertinent to examine India's position and potentials with respect to the various facets of International law, from United Nations related matters, International adjudications, i.e., cases before the international courts and tribunals; law of the Sea and maritime affairs; international criminal law including terrorism and extradition; human rights and humanitarian law; trade law and taxation; space law; legal issues arising out of disarmament; international cyber security; to International Financial crime.

1.2 On another place Article 246 (1) lays down as follows:

246 (1) Notwithstanding anything in Clauses (2) and (3) Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the Union List) in the seventh schedule.

The matters germane to the subject under evaluation are as follows:

xxxx xxxx xxxx xxxx xxxx
xxxx

9. Preventive detention for reasons connected with Defence, Foreign Affairs, or the sensitivity of India; persons subjected to such detention.
10. Foreign affairs; all matters which bring the Union into relation with any foreign country.
11. Diplomatic, consular and trade representation.
12. United Nations organisation.
13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and connections with foreign countries.
15. War and peace.
16. Foreign jurisdiction.
17. Citizenship, Naturalisation and aliens.
18. Extradition
19. Admission into, and emigration and expulsion from, India; passports and Visas.
20. Pilgrimages to places outside India.
21. Piracies and crimes committed on high seas or in the air; offences against the law of nations committed on land or the high seas or in the air.

Further Article 253 of the Constitution stipulates as follows:

253. Notwithstanding anything in the foreign provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.

1.3 India and International Law encompass a whole range of areas/subjects under International Law, including inter-alia, United Nations related matters; follow up of the work of the Sixth Committee (Legal) of the United Nations General Assembly; International adjudications, ie., cases before the international courts and tribunals; law of the Sea and maritime affairs; international criminal law including terrorism and extradition; human rights and humanitarian law; trade law; space law and; legal issues arising out of disarmament. Also, there is a range of new areas such as environment, intellectual property rights, energy security, nuclear energy, cyberspace, WTO, outer space, investment and maritime affairs – all of which call for careful yet rapid examination from international law perspective, by taking into account country's interest. The Committee's examination, however is limited to International Law as relates to Extradition, Asylum, Cyber-security and Financial Crime Laws.

1.4 During the first briefing of the Committee on 11 November, 2020, the representative of the Ministry of External Affairs, in his opening statement tried to capture the vast range of India's international legal engagements and stated:

“India's approach to global issues has been guided by accommodation and cooperation. We have also addressed with responsibility and understanding all issues of global interest and concern. Our interests in this domain have grown with our rising stature in global affairs. We also remain conscious of the realities of negotiations with sovereign governments, while upholding our national interest and priorities.... Within the Government of India system, the Legal and Treaties Division advises the Ministry of External Affairs, in particular, and other Ministries and Departments, on all issues pertaining to international law and treaties, including treaty negotiations, practice and interpretation. Our experts from the Division are also posted in our Missions abroad, especially in Geneva and New York for UN issues and The Hague for ICJ and other issues. The Division is also the repository of all such documents entered into by the Government of India. As a founding member of the United Nations, India strongly supports the purposes and principles of the UN and has made significant contributions to implement the goals of the Charter, and the evolution of the UN's specialized programmes and agencies. India strongly believes that the United Nations and the norms of international relations that it has fostered remain an efficacious means for tackling today's global challenges.

1.5 On the role of the United Nations as the main source of international law, he added:
“Central to promoting economic and social development, as well as to advancing International peace and security, many of the multilateral treaties brought by the

United Nations form the basis of the law that governs relations among nations. The United Nations represents our collective recognition that only cooperative and effective multilateralism can ensure peace and prosperity in the context of the range of inter-connected challenges that we face in our inter-dependent world. India strongly believes in multilateralism and peaceful settlement of disputes in accordance with international law....The development of international law and its implementation is carried out by the United Nations in multiple ways -by Courts, tribunals, multilateral treaties and by the Security Council, which can approve peacekeeping missions, impose sanctions or authorize the use of force when there is threat to international peace and security if it deems this necessary.....India has been recently elected for non-permanent member of the UN Security Council for 2 year term beginning on 1st January, 2021. This will be the 8th time that India will be serving in the Security Council. As the world's largest democracy, a major contributor to the UN peacekeeping operations, strong votary of the rights of the developing countries, advocate for human rights and the rule of law, voice of moderation and firm believer in the peaceful settlement of disputes, India is committed to enhance respect for international law and play an active role by serving on the UN Security Council.”

1.6 On India's engagement in international efforts to develop norms, standards and laws governing global interactions across various sectors, the representative of the Ministry of External Affairs further submitted:

“Implementation of the international law such as international treaties and Conventions at domestic level requires their incorporation into the Indian legal system by a legislation made by the Parliament. This is in accordance with the principle of ‘dualism’ reflected in Article 253 of the Constitution, which gives Parliament the power to make laws that implement international laws. Government of India is conscious that effective multilateralism and international rule of law requires the global governing structure to reflect contemporary realities. India continues to call for ‘reformed multilateralism’ - one that is relevant for the age in which we live, not when this architecture was erected.”

1.7 On India's growing global interests and responsibilities that are reflected in the range of agreements / MoUs that the country has entered into with countries or plurilateral / multilateral organizations, which often involve other Ministries/ Departments of the Government, he submitted:

“In the important pillar of judicial cooperation, we have concluded 50 Extradition Treaties and 11 extradition arrangements with countries and are examining 35 more such instruments with new partners. We also have Mutual Legal Assistance and Transfer of Sentenced Persons agreements. The economic crimes pillar has grown in importance. It includes cooperation on customs, financial data and fighting drugs. MHA has 14 MoUs and FIU has 40 MoUs. The security concerns / terrorism

cooperation have now come centre stage. MEA has 5 MoUs for counter terrorism JwGs, MHA has 17 MoUs on cyber security and there are 13 MoUs between our CERT groups. In recent times, labour and movement of professions has become more common, so Migration / Mobility Agreements as well as Social Security arrangements being concluded.”

1.8 The representative of the Ministry of External Affairs then dwelled on India’s engagements with groups of Nations formed on the basis of shared interests which also are sources of international obligations, responsibilities and rights and stated:

“In addition to our active contribution to multilateral mechanism for progressive development of international law, India is also engaged in various regional / plurilateral approaches to strengthen international legal order. To name a few: India has been a founding member of G20 process and played an effective role in proposing new ideas and finding solutions. Many important international legal issues including on international taxation (Base Erosion & Profit Shifting), sharing taxation information (Automatic Exchange of Information), countering terrorism, financing of terrorism (Financial Action Task Force), fugitive economic offenders etc., are discussed in the G20 platform. India has been raising the call for international action on terrorism including against financing of terrorism. India’s efforts translated into G20 standalone statements relating to countering terrorism that have been adopted in 2015, 2017 and 2019. We shall be the G20 chair in the coming year.// Many important issues like countering terrorism, security in use of Information and Communication Technology (ICT), financing of terrorism, customs cooperation, fugitive economic offenders, anti-money laundering, countering financing for terrorism, anti-drug trafficking are discussed under BRICS. This is another active action oriented grouping. India will assume the Chair in the coming year.// IBSA, formalized at Foreign Ministers’ meeting in Brasilia in June 2003, brings together three large democracies and major economies from three different continents, facing similar challenges. IBSA is a purely South-South grouping of like-minded countries, committed to inclusive sustainable development, in pursuit of the well-being for their peoples and those of the developing world. The principles, norms and values underpinning the IBSA Dialogue Forum are participatory democracy, respect for human rights, the Rule of Law and the strengthening of multilateralism.”

1.9 After its independence in 1947, as mark of recognition of the importance of international law to its national policy and international relations (Article 51(c) of the Constitution of India), India undertook an obligation to promote and foster respect for international law and treaty obligations in inter-country relations. Needless to point out that being a great country with its own destiny in world affairs, India has been active on the international field even before it became independent. Given its size, population, stature and significance, cultural traditions, India has a continuing great role to play in international relations.

1.10 The Legal & Treaties Division was established in the Ministry of External Affairs in 1957 as a nodal point to deal with all aspects of international law advice to the Government of India. Within the Government of India's system, the Legal & Treaties Division advises the Ministry of External Affairs in particular and other Ministries and Departments on issues pertaining to international law and treaty, including treaty negotiations, practice and interpretations.

1.11 In terms of specific work/mandate of the Division is concerned, the Ministry in a written reply informed the Committee the Division follows the work of the 6th Committee (Legal) of the UN General Assembly. It is a nodal point for the work of the Asian African Legal Consultative Organization (AALCO) whose Headquarters is in New Delhi since inception in 1956. The work in the field of the Law of the Sea, International Criminal Law, Terrorism and Extradition Legal Assistance in criminal matters, Diplomatic privileges and immunities involves immense examination and advising on core legal issues. The law of the seas field itself involves a vast variety of areas including Continental Shelf Claims; issues of jurisdiction and rights within the different maritime zones and the high seas including negotiations on Maritime Boundary Agreements, marine environment and marine scientific research. The Division is in charge of the development and codification of International Trade Law undertaken by the United Nations through the commission on International Trade Law (UNCITRAL).

1.12 They further submitted that the work of the Legal and Treaties Division is determined not only by the ever multiplying fields of global activities involving India but also by the nature of the vast growing field of international law itself. The sources from which international law springs are indeed varied and dynamic. In order to assess the status in international law of a conduct, proposal or claim made by States, examination of resolutions of UN General Assembly, the practice and precedence which exists, decisions of the International Court of Justice, arbitral and other awards and general principle of law uniformly recognized by the state, apart from multilateral and bilateral treaties, is required.

1.13 The Ministry of External Affairs in a written note submitted that, the work relating to treaty law and practice i.e. examination of documents, preparing instruments of Full Powers, Ratification, and Accession etc., the Division, being the depository of bilateral and international treaties for the Government of India also liaisons with all ministries in collecting all treaties/agreements signed with foreign countries for safekeeping and uploading on the website of the ministry to make them available for use/information for all.

1.14 With respect to the query about qualifications required for individual officers in the Division the Ministry submitted that at the recruitment level (Grade II- Under Secretary), the incumbent should have minimum qualification of LLM in international law and 5 years experience in the related field. The approved strength of the Division at present is 23 officers with Additional Secretary heading the Division. Currently, the Division has 10 officers working at the headquarters, 03 are posted in the Missions abroad.

1.15 During oral evidence on 11 November, 2020, the representative of Ministry of Law and Justice, explaining the relation between international and domestic law informed the Committee:

“Many cases decided by the Hon. High Courts and the Hon. Supreme Court reflect the dualist approach of the Indian legal system. I had made a reference to the Jolly George Verghese versus Bank of Cochin. The Court held that until the municipal law is changed to accommodate treaty, what binds the court is the former not the latter. There has been some digression by the Hon. Supreme Court in this regard giving rise to some sort of a concern regarding the relationship between the international law and India’s legal system. This was in the concern of Vishaka versus State of Rajasthan, a 1997 landmark judgment on sexual harassment of women at workplaces. In this case, not only did the court use the international law to find the meaning of the domestic law, it also held that international conventions not inconsistent with the Fundamental Rights, must be read. In the case of National Legal Services Authority versus Union of India, 2014 - recognizing transgender as a third category of gender, --the Hon. Supreme Court held that if Parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law. So, there was some sort of a digression in the established part of the law in this regard. In most of these cases, the Court has relied upon the Article 51C of the Constitution read with Article 253 to support its reasoning. Article 51C directs the State to endeavour to foster respect for international law and treaty obligations. Apart from the treaties, custom is also a formal source of international law. Perhaps, we find a reference to the same in the case of Vellore Citizens’ Welfare Forum versus Union of India, 1996. In the said case, the court held that there is no difficulty in accepting Customary International Law, not contrary to domestic law, as part of the Indian legal system. Although both treaties and CIL impose equally binding obligations on a country, unlike treaties it is often not easy to ascertain whether a norm has indeed attained the status of Customary International Law. A norm becomes a part of the Customary International Law only if States customarily follow that norm from a sense of legal obligation. To conclude, I would say that international legal norms are not directly enforceable in Indian courts till there is a domestic legislation giving effect to these norms or a treaty or an agreement to this effect.”

1.16 Replying to queries relating to codification of International law, the MEA representative, during oral evidence on 11 November, 2020 stated:

“The UN Commission on International Trade Law was established by the UN General Assembly in 1966 with a view to promote the progressive harmonisation and unification of law of international trade. This is composed of 60 member-states elected

by the UN General Assembly for a term of six years and India has been a member of UNCITL since the beginning and as a result of that we have been actively participating in the substantive issues on the agenda of UNCITL. I will just mention three or four areas which will give you an idea of the sectors in which we are now engaged in. We are part of the working group on Micro, Small and Medium size enterprises; we are part of the working group II on Arbitration and Conciliation and Dispute Settlement; working group III on Investors State Dispute Settlement Reform; working group IV on Electronic Commerce and working group V on Insolvency law and Working Group VI on Judicial sale of Ships. These are some of the areas in which we are working on international trade law.”

1.17 Explaining India's disposition towards international law and efforts made by the country towards reforms in the international governing structures, the MEA representative during oral evidence on 11 November, 2020 stated as under:

“As an ancient civilisation of immense diversity and today the world’s largest democracy, India has abiding faith in the spirit of multilateralism. India is committed to enhance respect for international law and play an active role by serving on the UN Security Council. The Government of India is also conscious that effective multilateralism and international rule of law requires global governing structures to reflect contemporary realities. We call for reformed multilateralism. Reformed multilateralism is one that is relevant for the age in which we live and contemporary realities and not for the time when the architecture of the international structure was created. In this regard, India has been working closely with other pro-reform countries through different platforms which include cross-regional groupings of developing countries, for instance the L-69, also the group known as the G-4 which have also sought for reforms of the UN system including of the Security Council. Besides, India has been raising the issue of the UN Security Council reforms and UN reforms in general in bilateral and multilateral discussions. India’s efforts at the United Nations for this kind of reform have led to the establishment of the inter-government negotiations at the United Nations.”

1.18 The Committee recognize the critical importance of safeguarding the Country’s interests in the varied streams of International Law and note with satisfaction that India is committed to multilateralism and enhancement of respect for International Law. They also laud the country’s continuing unwavering engagement with and commitment to the cause for reforms in global governing structures to reflect changing and contemporary realities. The Committee, however, find that India’s capacity, expertise and involvement in the framing and further modification of International Law in various spheres needs to be further strengthened. The Committee, therefore, desire that efforts towards that goal should not be limited to ensuring the recruitment of qualified personnel in concerned

Ministries and Divisions, but should also extend to promotion of institutions of international legal studies and research in the country, scholarships and funding of research by meritorious law students, professionals and educators.

The Ministry should also, in coordination with Ministry of Education identify some eminent institutions for establishing chairs for the purpose. Similarly, they should also establish suitable chairs in legal studies in the Foreign Service Institute and the Indian Council of World Affairs. They also desire the concerned ministries to promote and facilitate the entry of Indian international law experts into the various international governing bodies like the Sixth Committee (Legal) of the United Nations General Assembly, International Courts of Justice, International Tribunals, etc. responsible for framing and amending international law on the varied fields including in the areas of Law of the Sea and maritime affairs; international criminal law including terrorism and extradition; human rights and humanitarian law; trade law; space law; legal issues arising out of disarmament, environment, intellectual property rights, energy security, nuclear energy, cyberspace, WTO, outer space. Moreover, the Committee desire that the Ministry of External Affairs, in close co-ordination with all concerned ministries, set up a Working Group devoted to achieving the above goals and to ensure strengthening India's position in the study, framing, amending, implementing and interpretation of International Law adequately to protect its interests.

(Recommendation No. 1)

1.19 The Committee take note of the India's growing global interests and corresponding efforts made by the Government that manifest themselves in the range of agreements / MoUs that the country has entered into with countries or plurilateral / multilateral organizations in diverse areas spanning from judicial and customs cooperation, financial data sharing, war on drugs, counter-terrorism, cyber security, Migration, labour and movement of professionals, etc. While lauding the efforts of the Government in its endeavours, the Committee feel that the achievements in terms of the numbers of agreements entered into and signed with countries and plurilateral/multilateral organizations in various areas of possible cooperation are still full of possibilities, keeping in mind the Country's aspirations to become a much bigger player in international affairs. They, therefore, desire that the Ministry of External Affairs, as the Nodal Ministry, should vigorously explore more avenues of cooperation

with other countries and groups of countries particularly in the areas of extradition, economic crimes, counter terrorism and migrant mobility agreements for possible cooperation that a globalized economy and increasingly interconnected world that advances in information technology have ushered in.

(Recommendation No. 2)

1.20 The Committee are of the view that India follows the principle of ‘dualism’ reflected in Article 253 of the Constitution, which gives Parliament the power to make laws to implement international laws. They also note that the Supreme Court has on certain occasions and rulings digressed from this principle on the logic that Customary International Law, unless there exists a domestic law which contradicts the same, may be accepted. The Committee feel that rather than allowing such digression to become a point of contention between the institutions of the State, the Ministry of External Affairs should take note of the vacuum in domestic legislation on such matters and make efforts in coordination with the concerned Ministry to have adequate domestic legislation on such matters that are firmly based on the established principles of jurisprudence and equality of rights enshrined in the Constitution.

(Recommendation No. 3)

CHAPTER 2: EXTRADITION TREATIES

2.1 ‘Extradition’ is a process that provides a mechanism for the surrender, upon request, of a person who is alleged to have committed an extraditable offence and is either wanted for trial or been convicted in one State and found in the territory of the other State.

2.2 An extraditable offence means an offence as provided under the extradition treaty. Generally, any offence which is punishable with an imprisonment of one year or a more severe punishment under the laws of both the States is an extraditable offence.

2.3 In India, the law relating to extradition is contained in the Extradition Act, 1962. The Ministry of External Affairs is the Nodal Ministry for extradition matters and for the implementation of the Extradition Act.

2.4 Extradition of a person from India requires a legal basis, by way of an extradition treaty or an extradition arrangement or an applicable international convention. Till date, India has signed extradition treaties with 50 countries (Annexure A) and has extradition arrangements with 11 countries (Annexure B). For its implementation, the extradition treaty or an extradition arrangement or an applicable international convention need to be notified in the Official Gazette under section 3 of the Extradition Act, 1962.

2.5 Explaining the difference between Extradition Treaties and Extradition Arrangements, the representative of the Ministry of External Affairs, during oral evidence on 27th August, 2020, stated:

“... Extradition Treaty from India requires a legal basis by way of an Extradition Treaty or an Extradition Arrangement or an applicable international convention. The Extradition Treaty is a bilateral agreement setting out the precise terms and conditions for the extradition of fugitive offenders and, as I said, India has now Extradition Treaties with 50 countries. In the absence of an Extradition Treaty, person may be extradited from India on the basis of a reciprocal extradition arrangement ensuring reciprocity in accordance with the domestic law of the parties. For this purpose, both sides agree by exchange of *note verbal* that they shall extradite to each other fugitive criminals in accordance with their domestic laws and, as you know, we have extradition arrangements with 11 countries at the moment.”

Procedure for extradition requests

2.6 The Ministry not only processes extradition requests received from concerned law enforcement agencies, it also assists the law enforcement agencies in the preparation of extradition requests and helps in providing subsequent clarifications sought by requested State whenever called upon to do so. To facilitate preparation of extradition requests by law

enforcement authorities, the Ministry of External Affairs has developed and put on its website the Guidelines for preparation of extradition requests as well as the Template of the extradition request. The Ministry works in close consultation with Ministry of Home Affairs and Ministry of Law and Justice on extradition matters.

2.7 Responding to queries by Members on the inter-ministerial consultation process involved in signing an Extradition treaty, the representative of the Ministry of External Affairs further stated:

“There is a standard draft Extradition Treaty which is initially forwarded to the foreign States for consideration. The Ministry of Home Affairs and the Ministry of Law, Department of Legal Affairs are actively associated during the negotiations and finalisation of the Treaty. Views of the CBI are also obtained. Once the treaty is initialled at the technical level, then a Cabinet Note is moved and after the approval of the Cabinet, the Treaty is signed and ratified. That is the procedure for inter-Ministerial consultation.

i. Extradition requests of India

2.8 On requests for Extradition and how they are sent, the Ministry stated that an extradition request is prepared by the concerned law enforcement agency and forwarded to the Ministry of External Affairs through the Ministry of Home Affairs. Thereafter, it is processed in the MEA and after seeking approval of the competent authority, the request is forwarded to the concerned Indian Mission abroad for onward transmission to the foreign State concerned. In urgent cases, when it is believed that a fugitive criminal located in a particular jurisdiction may flee that jurisdiction, a request for provisional arrest of the fugitive may be made, pending presentation of the formal extradition request.

2.9 Replying to queries on procedure for sending extradition requests from India, the MEA representative submitted:

“The extradition request is prepared by the concerned law enforcement agency and forwarded to MEA. The extradition request is examined in the light of the treaty provisions and the evidentiary requirements. Once this is an order, the request is forwarded to the concerned Indian Mission abroad for transmission to the foreign country concerned. The MEA being the central authority in extradition matters advises and assists the law enforcement agency in the preparation of the extradition request and supplementary information as has been sought by the foreign States.”

2.10 Replying to queries relating to the issue of non-bailable warrant being required to process an extradition request and how it reconciles with the filing of prosecution complaint, the representative of MHA clarified during the oral evidence held on 27th August, 2020:

“The answer is very simple that filing of prosecution complaint is not a condition precedent for issue of non-bailable warrant. Non-bailable warrant can be issued even without filing of the prosecution complaint. So, what we have suggested is this. If you see Article 11 (3) of the Indian Extradition Treaty between India and United Kingdom, it only says that requirement is not filing of the charge sheet but the material placed should be sufficient to justify committal for trial. That is the prima facie material to satisfy the requested State that fugitive is involved in an offence or offences. This is an interpretation given by the Hon. Delhi High Court with regard to extradition request by the UK. So, UK was successful in getting an extradition process without filing the prosecution complaint. But when it comes to India, there is a requirement to file a prosecution complaint. When there is a bilateral agreement, the rule should be the same for both the countries.Another issue which was raised by an Hon. Member was with regard to non-conviction-based confiscation of the asset. If you see the Fugitive Offenders Act, it is very clear in terms of what the requirement is. The requirement is that there should be a warrant of arrest. For the issue of the warrant of arrest, you may require filing of prosecution complaint or you may not. The second condition is that the person must have left India so as to avoid criminal prosecution. The third condition is, being abroad, refuses to return to India to face a criminal prosecution.”

ii. Processing of Extradition requests of foreign countries to India

2.11 Explaining the processes and procedure involved in Extradition, the Ministry submitted that an extradition request received from a foreign country is examined in the MEA to see whether it conforms to all the procedural and evidentiary requirements of the relevant extradition treaty or arrangement. Thereafter, if the extradition request is in order, with the approval of competent authority, an inquiry magistrate is appointed. The Additional Chief Judicial Magistrate (ACJM) – 01, Patiala House Courts, New Delhi is the designated inquiry magistrate for all extradition requests. After the Inquiry, the Inquiry magistrate submits its report to the Central Government, either recommending or not recommending the extradition of the person sought. If extradition is not recommended, the accused will be set free. Before recommending extradition, the Extradition Magistrate has to be satisfied by evidence that a prima facie case exists against the fugitive offender. If the extradition of the fugitive is recommended by the inquiry magistrate, the Central Government may surrender the person sought on a date and time mutually agreed between the requesting and the requested State.

2.12 After receipt of an extradition request by the Requested State, the time taken for the final surrender of the fugitive criminal differs in each country and in each case. While in a few cases, a very short time is taken by the requested State, in others this may prolong for years, depending on the internal legal system of the Requested State.

Efforts made to broaden extradition network

2.13 On the ongoing efforts to broaden Extradition network, the Ministry stated that efforts are also underway to conclude extradition treaties with more countries, in particular, countries having citizenship by investment programmes or favourable permanent residency or passport regimes through investment route. In this regard, extradition treaty proposals have been made to countries having such programmes. This is to discourage those who seek citizenship of such countries and flee after committing serious economic and other crimes in India.

2.14 They also submitted that as the nodal Ministry for extradition matters, the Ministry of External Affairs is conscious of its responsibility and continues to make consistent efforts to broaden the extradition base by initiating and concluding extradition treaties and arrangements with as many foreign countries as possible to facilitate bringing back fugitive criminals for trial by competent courts in India.

2.15 When asked about the efforts to extend extradition treaties with more countries, the Ministry official submitted as under:

“In 2014, there have been four extradition treaties that have been concluded which are with Afghanistan, Lithuania, Malawi and Morocco. Of course, as I said, there are several that are currently under discussion.”

2.16 Responding to queries on Mutual Legal Assistance treaties with other countries, the representative of the Ministry of Home Affairs during the oral evidence on 11 November, 2020 submitted:

“The Ministry of Home Affairs is the central authority for dealing with requests of mutual legal assistance in criminal matters. As you are aware, we have signed Treaties with 40 countries and a little while ago, you mentioned about three countries with whom we have not ratified these Treaties. They are Morocco, Cambodia and Brazil. We have signed the Treaties with them but they are yet to be ratified. As regards the purpose of Mutual Legal Assistance Treaties, it is clearly defined in the guidelines and there are various types of requests which can be made under the Treaties which are about identification and location of persons and objects, taking evidence and obtaining statements, executing seizures and searches, providing information, protecting and preserving computer data, etc..... There are 845 MLAT requests pending with various countries which include Letters Rogatory and MLA requests. Out of these, important countries like USA, UAE, UK, Switzerland, Singapore and Hongkong alone account for more than 50 per cent and this is an ongoing process. Many of these requests get partially executed and as the investigation proceeds, supplementary requests are also made. We are getting cooperation from the countries concerned and we are also in touch with other countries with whom we want to enter into MLATs.”

2.17 Explaining the different mutual obligations between countries under Mutual Legal Assistance Treaties, Extradition Treaties and Extradition Arrangements, the representative of the Ministry of Law and Justice during the oral evidence on 11 November, 2020:

“Sir, so far as the MLATs in civil matters are concerned, it has already been pointed out that they are governed by Section 29 of the CPC, which provides the mechanism for service of foreign summons. As far as Section 44 A of the CPC is concerned, it prescribes the procedure for execution of decrees passed by the courts in reciprocating territory. Section 47 also provides the mandate that the district court shall refuse execution of any such decree if it is shown to the satisfaction of the court that the decree falls within any of the exceptions and clauses of Section 13. // Sir, as far as India is concerned, it has also acceded to The Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial matters and also Hague Convention on taking of evidence abroad in civil and commercial matters in the year 2007. The Ministry of Law and Justice is the central authority for both the conventions; and we are maintaining the correspondence record in this regard but it is not in the form of a list, as the same was enquired by the Hon. Chairperson. // Sir, so far as the role of the Department of Legal Affairs in Ministry of Law is concerned, it is primarily concerned with the tendering of advice in the Ministries on legal matters. The Department is concerned with reciprocal arrangements with foreign countries for the service of summons and suits for the execution of decrees of civil courts, for the enforcement of maintenance orders and for the administration of the estates of foreigners dying in India. So, this is in regard to MLATs. // Observations have also been made with regard to the extradition treaties. In this regard, from the perspective of law, I would like to mention that unlike the treaty mechanisms, where States are obligated to consider request for extradition, which is a mandate, the extradition arrangements are non-binding. So, that is the basic difference between the treaty mechanism and the extradition arrangements.”

2.18 When asked about that how does the country deals with fugitives to countries India do not have extradition treaties with, the representative of Ministry of Law and Justice stated:

“Sir, wherein the treaty mechanisms and the extradition arrangements are not there, then we fall back to the third level and that is the multilateral conventions which India may have entered into with various countries which provide a binding extradition framework. The question was also raised and request can also be made for the surrender of fugitives so far as non-treaty states are concerned. So, this covers, Sir, the entire scenario as far as the law of extradition is concerned. In the aforesaid context, I would also like to point out that the challenges to extradition orders are also raised outside the treaty terms. So, these are, generally, based on the concerns of the human right violations such as torture or cruel inhuman degrading statements or the existence of the prisons in the concerned state. So, to that extent, the foreign courts will enquire into these concerns, depending upon the Judiciary’s role in domestic justice systems and the strength of human rights movement in that country. Apart from it, an

observation was also made regarding as to what are the principles which are governing in the field of extradition treaties. In this regard, I would like to point out the three principles, which are, generally, prevalent and considered. The first is the principle of dual criminality. This is a principle wherein the act in question has to be an offence in the jurisdiction of both states. That is the treaty, the basic principle, that if it happens to be an offence in India, it needs to be an offence in other State too. The second principle which we, generally, consider is the principle of speciality. The principle of speciality is, basically, that an extradited individual can be tried only for the offences which are specified in the extradition requests. So, it cannot be for the connected offences but it is for the specific offences which have been referred there in the extradition treaty. The third principle which we, generally, refer to is the political exception. The political exception is, Sir, that request of extradition must be declined, if the real purpose of the request made is to punish the person requested for his political opinion rather than the crime committed by him. These are the broad parameters with regard to the extradition treaties which I wanted to bring to the notice of the Hon. Committee.

2.19 The Committee note that India has signed extradition treaties with 50 countries and has extradition arrangements with 11 countries and that efforts are on to extend the network of extradition treaties and arrangements with other countries. While appreciating these achievements and the efforts underway to extend India's network of extradition treaties with more countries, the Committee are concerned with the delays in extraditing offenders fleeing the country and taking refuge in the countries particularly with which India already has either signed an Extradition Treaty or have Extradition Arrangements and want that the process should be expedited in each case. Moreover, the Committee also observe that taking advantage of absence of extradition treaties the offenders are taking refuge in the countries having provisions for citizenship by investment programmes or favourable residency or passport regimes through investment routes. The Committee, therefore, strongly recommend that such countries should be indentified and an extradition treaty or extradition arrangement should be initiated/concluded on priority basis so that the cases of fleeing of offenders to those countries after committing serious economic and other crimes in India be prevented.

The Committee are perturbed to observe that in certain instances, the requirements of the rule for India that of the other treaty Country which should be the same ended up being different, and India's request being delayed on such unequal application of rules. The Committee desire that the Ministry of External Affairs being the Nodal Ministry for Extradition Treaties, should make prompt and effective efforts to

ensure equality of application of rules under the treaty with partner countries. They also desire that the Ministry should explore with other like-minded countries to evolve an international mechanism to oversee the equal application of rules under such treaties and provide relief to aggrieved countries in cases where their treaty partners fail to respect the equal applicability of rules under the treaty.

(Recommendation No. 4)

2.20 The Committee note that India is signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in civil or commercial matters. The Hague Convention on taking of evidence abroad in civil and commercial matters was also adopted in the year 2007 under the belief that the process of service of legal documents would become faster than letter rogatory and India has also signed Mutual Legal Assistance treaties with 40 countries. The Committee, however, find it disappointing that even then there are 845 MLAT requests pending with various countries which include Letters Rogatory and Mutual Legal Assistance requests. The Committee, therefore, conclude that the desired cooperation from the countries concerned in honouring such requests is waiting. The Committee, therefore, desire that the Ministry of External Affairs should take serious cognizance of the huge pendency of requests and institute a task force to look into the reasons for the same and suggest measures for the prompt fructification of all extradition and Mutual Legal Assistance requests pending with various Countries. Simultaneously, more and more MLATs must be entered into with other important countries on priority basis.

(Recommendation No. 5)

CHAPTER 3

ASYLUM ISSUES

3.1 India is not a party to the Convention relating to the Status of Refugees 1951 and its Protocol of 1967; Convention of Reduction of Statelessness, 1961. Asylum is granted on case to case basis.

3.2 In his deposition during the oral evidence on 11 August, 2020, the representative of the Ministry of External Affairs stated:

“On asylum Mr. Chairman, as you mentioned, India is not a signatory to the 1951 UN Convention on the status of refugees including the 1967 protocol. Currently, refugees are treated at par with foreigners as per the domestic legal requirements governing their entry, stay and exit. The domestic legislation addressing their status are: the Foreigners Act, 1946; the Registration of Foreigners Act, 1939; the Passport (Entry into India) Act, 1920, as amended from time to time; and the Passport Act, 1967. // Notwithstanding the fact that India is not a party to the Refugee Convention, India has been practising the principle of non-refoulment. Our protection regime is based on the fundamental rights guaranteed under our Constitution and the relevant legal provisions. As you are aware, a number of cases on this subject are currently pending in the Supreme Court. The Ministry of Home Affairs is the administrative body in charge of the issue.”

3.3 Pending appropriate decision on the issue of comprehensive legislation, currently refugees are treated at par with foreigners as per the domestic legal requirements governing their entry, stay and exit. The domestic legislations addressing their status are (1) The Foreigners Act 1945 (2) The Registration of Foreigners Act 1939 (3) Passports (entry into India) Act as amended and (4) Passports Act 1967.

3.4 Responding to a query regarding the difference between Asylum seekers and Refugees, the representative of the Ministry of Home Affairs during oral evidence on 11 November, 2020 clarified:

“It will depend upon their papers and claims. Refugees and asylum seekers have to establish on why they came to India without documents. We have a very robust visa system. We allow all foreigners to come here to do business with us, to study or to do jobs or whatever. But why they had to come here? Asylum seeker is a victim. He has been hounded out of his country on any reason, maybe, ethnicity, language, or belonging to particular ideology, religion, etc. We have to see whether that ground is correct or not. Refugee can be an economic migrant.”

3.5 On the issue of India not being signatory to the UN Convention relating to the status of refugees 1951 and its 1967 Protocol, a representative of the Ministry of Home Affairs during evidence submitted:

“Regarding the issue of asylum, we have sufficient legal framework at the moment. We have a written Constitution, which many countries in the world do not have, where foreigners also have been granted certain Fundamental Rights and other rights. We have the Foreigners Act which covers the whole gamut of issues related to entry of foreigners, their stay in India, their activities in India and their exit from India. We have other Acts also – the Registration of Foreigners Act, the Citizenship Act. We also have various other instruments. // The Central Government has passed legal orders under these Acts to govern this regime of legal as well as illegal foreigners. Illegal foreigners are those who do not have documents or whose passport or visa status is not clear. He can be a refugee also. For that, we have issued a protocol to various implementing agencies like FRRO and FROs in the States as well as at the Central level where the status of a foreigner, who claims that he has actually been persecuted, can be assessed and then, in consultation with security agencies and the MEA, a view can be taken whether to let him stay on in India for a long time, to grant him a long-term visa. If he is found to be faking it or he is an economic migrant in the disguise of an asylum seeker, then action regarding his deportation etc. can be taken. It has been noticed that since 1951, when this protocol came – then, this UN convention and later on the Protocol came – there has been a consistent view in the Government that the Government needs flexibility in dealing with these matters and we have been very successful. There have been lot of incidents of asylum seekers coming to India and they have found India a very hospitable place. We have been acclaimed internationally. So, there is no reason or cause for any single law. We already have enough administrative and legal frameworks with us.”

3.6 The Committee also called select subject experts to hear their views on their areas of specialization. During the hearing, Prof. Manoj Kumar Sinha, an expert on Refugee Law, explaining the reasons for India not being a signatory of the UN Convention on the Status of Refugees, 1951 and the 1967 UN Protocol stated:

“The concern is whether we should become a party or not a party, whether we are respecting the refugees in India. We see that we have a good track record in protection and respect of the refugees in India. All the eight SAARC members are not parties of the 1951 Convention and 1967 Protocol. If certain modification takes place what will happen? India for a long time is talking about the concept of burden sharing because refugees will always affect the porous border or proximity. So, India will face such a problem, and other African nations are also facing a similar problem because of the porous borders and people move from one country to another country. Refugee problem should be solved globally. It should not be confined to one country. Refugees come to my country because of porous border but refugee problem is global. It is not

the country which receives. Bangladesh has received Rohingya refugees and India is also helping them. So, burden sharing concept is missing in 1951 Convention. It does not talk about burden sharing problem. If burden sharing is there, then there is a possibility of reconsidering or revisiting the 1951 Convention and 1967 Protocol.”

3.7 When asked about the possibility of discretionary powers of concerned officials in dealing with requests of Asylum seekers in the absence of the established procedures under the UN Convention on the Status of Refugees and the 1967 UN Protocol, the representative of the Ministry of Home Affairs affirmed:

“One major question was regarding the asylums that it may be possible that the lower officers might misuse the discretion that has been given to them. To regulate it, there is a standard operating protocol. It has been in operation since 2011. We have revised it last year in 2019. It lays down the duties what the concerned FRRO who is generally the SP or the DCP of the area or the FRRO is a Central Government intelligence officer are supposed to do. They vet the claims of the asylum claimant regarding persecution and see why that person has come to India without any documentation and for what purpose. After then, there is a further examination at the central level and we take opinion of MEA also. Then if everything is found in order, then only the LTV cases are processed. After that, annual renewal takes place. After five years again that LTV case will come to the MHA and this whole process is online. Nobody can hinder when the documents come etc. Regarding other claims like an asylee has been staying in India for a long time and then he claims citizenship, the whole procedure is online. He can file review as well as revision which is available under the law.”

3.8 **The Committee are aware that India is not a signatory to the UN Convention, 1951 on the status of Refugees and the related 1967 UN Protocol. The Committee find the Government of India’s stance on the issue, that India’s Domestic laws are adequate to effectively handle refugee crises facing the country, as demonstrated in the past crises involving Tibetan refugees and Tamil refugees, not fully convincing. The Domestic Laws like the Foreigners Act, 1946; the Registration of Foreigners Act, 1939; the Passport (Entry into India) Act, 1920 are legislations that govern the regulation of entry, stay and exit of foreign nationals during normal times and under normal circumstances, whereas a refugee situation demands prompt and specified response owing to the crisis nature and the urgency of response required to avoid potent humanitarian crises resulting therefrom. However, the Committee are also taking note of the limitations in the 1951 UN Convention on the Status of Refugees and its 1967 Protocol, specifically in the critical lack of the concept of shared responsibility of all Sovereign countries, in which**

India strongly believes. The Committee, therefore, while disagreeing with the stance that existing Domestic Laws are adequate to deal with refugee situations, desire that the Ministry of External Affairs steadfastly advocate India's stand on the concept of shared responsibility of all Sovereign countries in refugee crises developing anywhere in the world, making a strong case for review of the 1951 UN Convention and its 1967 Protocol. After that India can reconsider and revisit the 1951 Convention and 1967 Protocol.

(Recommendation No. 6)

3.9 The Committee are aware that in the absence of any domestic law that is specific to address the situations of refugees and asylum seekers, and also in the light of India being not a signatory to the 1951 UN Convention or its 1967 Protocol, requests for asylum are being dealt with existing legal framework at the moment. They are aware that the Foreigners Act covers a whole gamut of issues related to entry of foreigners, their stay in India, their activities in India and their exit from India, besides other Acts like the Registration of Foreigners Act, the Citizenship Act, etc. The Committee are apprised that the Central Government has passed legal orders under these Acts to govern the regime of legal as well as illegal foreigners, and that a protocol is issued to various implementing agencies like FRRO and FROs in the States whereby the status of a foreigner can be assessed and in consultation with security agencies and the MEA, a view is taken whether to grant her/him asylum or the status of a refugee. While recognizing the flexibility this approach grants, the Committee are of the opinion that it leaves much scope for elements of discretion to officials. The Committee, therefore, recommend that in the absence of a domestic Legislation of Refugees and Asylum Seekers, the Ministry of External Affairs, in consultation with concerned Ministries like Home Affairs, Law and Justice, etc. should prepare and notify a Domestic Protocol on status of refugees and asylum seekers with specific responsibilities assigned to specific agencies. This would not only ensure prompt response but also enhance accountability in dealing with situations of refugees and asylum seekers in the Country.

(Recommendation No. 7)

CHAPTER 4 INTERNATIONAL CYBER SECURITY

4.1 There is general consensus with regard to the applicability of International Law, in particular the UN Charter, to Cyberspace however, the question of how International Law shall apply is still under discussion.

4.2 Explaining the complex questions posed by cyber warfare as against traditional warfare and the applicability of existing internal law which provides for the right to self defence of sovereign countries under Article 51 and article 2(4) of the UN Convention, an expert during the oral evidence before the Committee informed:

“In a physical war, you know from where the missile is coming and where the bomb is coming. In a cyber world, we do not know from where things are coming. It is all virtual there. If someone attacks me on a cyber mode, shall I attack in the nuclear mode or put a physical war? These issues have become very important in this exercise of 2(4) and 51.”

4.3 India’s stand has been that while International Law does apply to cyberspace, however, it is insufficient in its current form to address the issues of attribution in cyberspace, violation of sovereignty in cyberspace, and the threshold for reaction and proportionality of counter-measures when it comes to a cyber incident, and hence more deliberations would be necessary to define further modalities to deal with these issues. While the objectives and principles of these provisions of IL remains the same in cyberspace, but their applicability, modality and usability would have to be customized for cyberspace.

4.4 India acknowledge that States must observe sovereignty, sovereign equality, the settlement of disputes by peaceful means and non-intervention in the internal affairs of other States and comply with their obligations under international law to respect and protect human rights and fundamental freedoms.

4.5 India endorses that common understanding on how international law is applicable to State use of ICTS is important for promoting an open, secure, stable, accessible, interoperable and peaceful ICT environment.

4.6 The European Convention on Cybercrime (Budapest Convention), is an initiative of the Council of Europe. Many European Countries and a few non-EU countries are Party to the Convention. India is not a Party to the Convention. In 2018, Russia also tabled a proposal to address the challenges involved in cyber crime in the UN.

4.7 When asked to spell out India’s cyber diplomacy strategy, MEA stated in a written reply that India has been supportive of a secure, open, accessible, peaceful and stable internet with

due respect to sovereignty of countries. India follows a multilateral and multi-stakeholder approach on the matters related to Cyber space, including on cyber crime, internet governance etc., guided by our democratic values. // India's stand has been that while IL did apply to cyberspace, it is insufficient in its current form to address the issues of attribution in cyberspace, violation of sovereignty in cyberspace, and the threshold for reaction and proportionality of counter-measures when it comes to a cyber incident, and hence more deliberations would be necessary to define further modalities to deal with these issues. While the objectives and principles of these provisions of IL remains the same in cyberspace, but their applicability, modality and usability would have to be customized for cyberspace.

4.8 On the role of the Cyber Diplomacy Division in formulation, negotiation and implementation of evolving norms on cyber security, the Ministry further stated that the Cyber Diplomacy Division is the nodal Division in MEA regarding India's engagement on bilateral and multilateral levels on cyber matters. The Division coordinates cyber related meetings and discussions between our domestic organisations/agencies like NSCS, MeitY, CERT-In, DoT, NCCIPC, MHA, CBI, etc. and their foreign counterparts. // As a part of its endeavour for cooperation with other nations in global cyber issues, India has established bilateral cyber dialogues and held regular bilateral dialogues with major global players (countries) and international organizations including EU, USA, UK, France, Germany, Russia, Japan, Sweden, Republic of Korea, Brazil and Australia. // At the multilateral level, India's engagements are in the three main Groups under the UN viz., GGE, OEWG and IEG on matters related to cyberspace and information security. // The regional /plurilateral cooperations are reflected in various important regional mechanisms such as BRICS, SCO, ASEAN etc. // Cyber Diplomacy Division represents MEA at the UN mechanisms (the Indian delegation also includes the representatives from other relevant organizations/ministries such as NSCS, MHA, MeitY, DoT etc. // India has been actively participating in and contributing to Cyber Conferences and Conventions to voice its views and shape global cyber policies with a view to strengthen our cyber security in keeping with its commitment to a multi-stakeholder model of governance.

4.9 On specific query about the various issues, stakeholders, institutions and challenges relating to global discussions on cyber security, the Ministry informed the Committee that India believes that security and safety of emerging technologies like 5G, IoT devices, AI/Machine Learning, neural networks, etc needs to be ensured to safeguard the national security and public order of a country. India needs cooperation of the international community on issues such as supply chain vulnerabilities of ICT products/services, standardization of equipments, and prevention of any software or hardware backdoor in technological tools. // As 5G (as well as the related supply chain risks) are a concern for all the members, it would be pertinent to undertake a coordinated mechanism for building appropriate 5G infrastructure, keeping the malicious players in check, and to strive to bring out optimal norms, rules and principles governing the use of 5G and newer technologies related products and services, under the auspices of UN. // Data privacy, security and localization are other important areas. // Various stakeholders and institutions with the Government of India related to global

discussions on cyber security are DoT, MHA, MeitY, NSCS etc. // Digital divide between countries; proxies by states and non-state actors for cyber attacks, espionage, cyber threats and malicious activities; emerging technologies, supply chain vulnerabilities, backdoor installation of applications etc. into the ICT products and services are some of the areas of discussions.

4.10 Responding to queries on the Memorandum of Understanding (MoUs) signed by India with various nations and stakeholders to enhance cyber security, the representative of the Ministry of Electronics and Information Technology during oral evidence submitted:

“With regard to MoUs which MEITY has signed for cyber security, at present, we have signed 17 MoUs out of which 13 are active. The remaining four are at different stages of renewal. Apart from this, in the context of international cooperation, not only we go through the MoUs, but we are also very active members of different international organisations. I mentioned about the forum of incident response and security teams. Then on APCERT, we are very active members. We are also convenors of two technical working groups in APCERT which allows us to lead the efforts in cyber security in two domains, IoT Security and secured digital payments. Also, I would like to mention that we are currently co-chairing the global forums for cyber security called the GFCE which has 55 countries and 18 international and regional organisations. These forums provide us with very good opportunities to work in international cooperation in cyber security domain. We are very active in these forums and we continue to lead in several domains in terms of our efforts to ensure that we are able to provide security to all the cyber systems in our country. In GFCE, they unanimously endorsed the Delhi communique in 2017 which prioritises 11 topics under five broad themes on cyber capacity building which are under the question asked by the hon. Members. This includes cyber security policy strategy, cyber incident management and critical infrastructure protection, cyber crime, cyber security culture and its skills and cyber security standards. In all the domains, we are very active in international forums to really ensure that our interests are protected and we are able to provide leadership in cyber security in international organisations.”

4.11 Asked about the applicability of International law on cyberspace and the progress on cyber laws internationally and India’s involvement in the process, he further stated:

“On cyber, there are actually different streams that are proceeding in terms of developing a new framework on how to govern this. This is a new aspect that has come up. It also provides some opportunities as well as certain challenges...There is one stream that is currently under the ambit of the United Nations. In the UN process, there is a small group which has 25 members. India is also a member of that. They have concluded five sessions and the sixth session of that is currently in process and they are now looking at the entire range of issues that would pertain to what the concerns as well as the opportunities would be. The second group in the United Nations that is working is one that involves all the UN members. It is the open-ended working group

and they also submit reports on an annual basis. The third group that is there is an Inter-Governmental Meeting on cybercrimes. This is also under the UN framework and we are a member of that as well. We are going to submit a report at the UN in 2021 on what the initial outcome of all this is....In addition to these three processes, which are discussion, mandate setting, and processes in small or large groups, there is also an initiative which was launched by the Russians at some time for an international convention under the United Nations and that would in a sense provide a framework which would then be negotiated and be accepted by countries globally. In addition to this UN process, as you rightly pointed out, there are certain regional initiatives and the European one, the Budapest process particularly, is most notable. We are not a member to that. We have followed the multilateral process under the UN....The second thing that you have mentioned, Mr. Chairman, was about the ICANN. This is, of course, is something that governs the Internet. The nodal Ministry for this is MeitY. We are not a member on the governing board but we have made a strong pitch to become a board member of ICANN and MeitY and MEA are now working towards this particular objective..... The third aspect that you have mentioned, Mr. Chairman, was about the overall experience of the Internet, servers, routers and the issues pertaining to data protection, data security.This, of course, is a very serious issue and I think, this is something that concerns us not only at the micro but also at the macro/national level. Because at the micro level, while there may be issues of data privacy, which may be of concern, the concerns at the macro/national level, are of a much greater amplitude, and, therefore, this is something that the Government takes very seriously. I think, there is a lot of discussion that is going on. At the end of the day, data security is something that is linked to national security and we look at it in that context as well particularly when national security issues are concerned.”

4.12 On the status of discussions being held at the United Nations to evolve architecture on cyber security and India’s line of reasoning during these discussions, the Ministry of External Affairs in a written submission stated that under the UN Process, three principle mechanisms for discussions are (i) Group of Governmental Experts (GGE) (on Advancing responsible State behaviour in cyberspace in the context of international security), (ii) Open-Ended Working Group (OEWG) (on Developments in the Field of ICTs in the Context of International Security), and (iii) the open-ended Inter-governmental Expert Group (IEG) (to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime). // The current OEWG has its mandate from 2019-20 and is expected to submit its report by 2021 (earlier marked for 2020, but due to Covid 19 pandemic has since been postponed). The draft reports for further discussions on it are expected by end of 2020. // India has been a participating member of the Inter-governmental Expert Group (IEG) on cybercrime and attended its 6th meeting on virtual mode in July 2020. The Expert Group focused on two agenda items (i) international

cooperation; and (ii) crime prevention. The 7th and last meeting will take place in 2021 for stock-taking and discussion of future work when the final report would be prepared. // India's stance has been an evolving one and takes the national interest as its foremost priority. Common understanding on how international law is applicable to State use of ICTs is important for promoting an open, secure, stable, accessible, inter-operable and peaceful ICT environment would be elaborated and made into a report. India believes that States must observe sovereignty, sovereign equality, the settlement of disputes by peaceful means and non-intervention in the internal affairs of other States and comply with their obligations under international law to respect and protect human rights and fundamental freedoms.

4.13 The Committee appreciate India's stance on cyber diplomacy which is for a secure, open, accessible, peaceful and stable internet respecting sovereignty of countries, and the multilateral approach to Cyber Space and internet governance. They also believe that International Law while being applicable to cyber space needs certain customization in modalities for effective application. The Committee are also aware of the ongoing efforts and India's active role under the UN processes and the mechanisms for discussions for evolution of a global architecture for cyber Security. The Committee, however, desire that the Ministry of External affairs make enhanced efforts in coordination with other concerned Ministries to contribute more and perhaps lead the global efforts to customize the modalities for application of International Law in cyber space and internet governance, in building a global architecture for cyber security, as well as in the formulation of new legal regimes that will respect sovereignty of countries and promote a peaceful order in cyberspace.

(Recommendation No. 8)

4.14 the representative of the Ministry of Electronic and Information Technology, while briefing the Committee on Cyber Security mechanisms and efforts in the country, during the oral evidence on 11 November, 2020 stated:

“The very first one was about what are we doing to keep pace with the advancement of new technologies across the globe and what kind of responses are we embarked on. We are trying to strengthen our legal framework keeping in view the emergence of dominant technology platforms across the globe which also operate within India. Many new technologies are coming in very rapidly. We are looking at amendments to IT Act. Currently, we are working on it. The IT Act came in the year 2000 and was amended in the year 2008. We feel that now with the new developments, there is a need to bring out further amendments and we are working on that...The second thing that we have done by way of strengthening of the legal framework is, to bring Personal Data Protection Bill before the Parliament. This is currently before the Joint Committee of the

Parliament. This will lay down the principles through which the processing of personal data of Indian citizens and Indian residents is done. All the data fiduciaries will be expected to abide by this law when they deal with the data of Indian citizens and Indian residents....One particular thing that we are trying to strengthen is the nature of the relationship. This is something which we take pride in being the pioneer, in bringing out this concept. Sometimes, there is lack of balance between the size and the stature of huge global companies and individual whose data is being used by them. We are bringing in the concept of the entities that handle the data of Indian citizens, Indian residents as being data fiduciaries, which means that the data of Indian residents is entrusted to them in the fiduciary capacity. They have to do such acts with that kind of data which are in the interest of the person whose data it is. So, by starting with the definition of what that relationship is, we are trying to strengthen and lay down the principles by which this interaction happens between Indian users and any of the companies; be it Indian or global....We have also set up a Committee of Experts to suggest the policy and measures relating to non-personal data. We expect that we will be coming out with a policy in that space. Non-personal data deals with things like data belonging to the community. It is not identifiable to a single individual but it is still very valuable data; traffic data for a particular area or data pertaining to the level of pollution. We strongly believe that that data also belongs to India, belongs to the community, the Indian ecosystem and that we should be able to take full advantage of that in driving our digital economy. That is another action that we are taking.....We are also moving forward with strengthening our ecosystem in terms of the ability to harness new technologies, like artificial intelligence, IOT, augmented reality and virtual reality, additive manufacturing, and various other technologies that have come in alongside the robotics, drones, etc. We believe that having strength in our own data platforms is essential for us to continue to serve the global requirements in terms of IT. Some of our companies are the best in the world in providing IT services. We are encouraging them to also move into IT products and digital products. This strengthening is another area of activity that we are currently embarked on.....Many of our institutions that are set up and are part of the Ministry of Electronics and IT play a significant role in protection and safeguarding the cyber space for India. Among them, the lead institution is CERT-In which is led by Dr. Sanjay, who is present here. CERT-In has multiple responsibilities. They are the first entity to whom any cyber incident is expected to be reported by any of the major organisations or companies. If any data breach happens, if any incident happens which is impacting our security, it is expected to be reported by law to CERT-In. CERT-In maintains 24x7 incident response help desk. They issue alerts and advisories regarding the latest cyber threats and vulnerabilities. They suggest counter measures to protect computers and networks on a regular basis. They also proactively collect, correlate, contextualize, analyze and share tailored alerts with various organisations across sectors.....They are in touch with the key players in almost every major or critical domain, like the airports, ports, energy infrastructure, transportation infrastructure, and also with players in all those spaces. They are also in touch with the State Governments. They also empanel Information Security Auditing

Organisations to help our institutions undertake various kinds of security audit to protect themselves. CERT-In also helps us. They have a relationship with their counterpart organisations across the globe and they help us to get and to share intelligence which goes towards safeguarding our interests in the cyber space. They conduct regular training programmes and they spearhead a network of chief information security officers which are spread across the Ministries, State Governments and various organisations. They work towards conducting significant exercises so that this entire apparatus remains alert and capable of handling cyber emergencies. These are some of the activities that are undertaken by us.....Under the guidance of the Ministry of External Affairs, CERT-In also helps us to maintain a presence and an engagement with the UN Group of Governmental Experts (UN GGE), OEWG, and IG -- which are related to the UN and also, with ICANN -- which is related to the governance of the internet. We also currently co-chairs an international organisation which is known as Global Forum on Cyber Expertise, which is for the capacity building measures in cyber security to be built across the globe. These are some of the key activities that we are engaged in. We have given our responses to the questions that were sent to us and we will be happy to respond to any other questions.”

4.15 Elaborating on the transnational nature of cyber security and India’s ongoing efforts at various levels globally, the representative of the Ministry of Information and Technology stated during oral evidence on 27 August, 2020:

“On the issue of transnational nature of cyber security, I would like to mention that in order to minimise the security risk and strengthen security of the cyber space, we have entered into international cooperation to effectively deal with cyber security issues, strengthening cooperation with all the stakeholders to deal with cyber security issues which are the main focus areas of the Government. This aspect is being dealt with by way of security cooperation agreements in the form of MoUs between our CERT-IN, that is, Indian Computer Emergency Response Team under our Ministry and its overseas counterpart agencies that are willing to work with us and share information in a timely manner...In addition to the MoUs, of which 13 are currently active with UK, Japan, South Korea, Israel, Australia, Brazil, Singapore, Vietnam, Bangladesh, Seychelles, Morocco, Finland and Estonia, CERT-IN also has been active in the following forums. The FIRST stands for the Forum of Incident Response and Security Teams. The membership in this forum enables incident response teams to work more effectively and respond to incidents of security in a reactive as well as proactive manner. Also CERT-IN is an operational member of the Asia-Pacific Computer Emergency Response Team – APCERT – which maintains a trusted compact network of computer security experts in the Asia-Pacific region to improve the region’s awareness and competency in relation to computer security incidents. CERT-IN is also a member of two technical working groups of APCERT, namely, IoT security and secure digital payments. The IoT security group is to propose solutions to address the IoT security issues and challenges in the Asia-Pacific region. It is a very growing area in cyber space and very important for the

emerging technologies. As Convener of these two working groups, CERT-IN has been able to understand the best practices deployed in the advanced economies as well as contribute positively in the growing economies. CERT-IN is also a member of the APCERT Drill Working Group which organises APCERT drills across APCERT member countries. Also, CERT-IN has participated as an observer group in the cyber defence exercise Locked Shields in 2018 organised by NATO Cooperative Cyber Defence Centre of Excellence. Also in the area of hybrid threats and influencing, the Finland had led initiative to conduct the first joint hybrid threats workshop and table top exercise in India. For this, the support was provided by the Indian Bach of Finland and Estonia for conducting two-day Indian hybrid CO joint-workshop....Also Sir, under bilateral and multilateral forums, CERT-In international counterpart agencies are exchanging information on latest cyber threats as and when they are observed an information on latest cyber trends, technical alerts on advanced cyber-attack campaigns, technical indicators of compromise etc.... Capacity building is another major area of activity for securing the cyber space and the activity is related to NATO Cyber Defence Exercise Lock Shields and Hybrid Threats Intelligence are aimed at capacity building....Then CERT-In also led the participation of India to UK in the India-UK bilateral cyber crisis simulation exercise. CERT-In also participated in Asian CERT-In Incidents Response Deal wherein the objective was to strengthen the cyber security preparedness of Asian member States and partners....CERT-In is very active in international exchange and cooperation to ensure that the cyber space is secured from national point of view and also, we are proactive in terms of dealing with any incoming and emerging threats in cyber space.”

4.16 On the key issues and concerns shaping global agenda on cyber security and threat, the Ministry of External Affairs submitted in a note to the Committee that due to increasing connectivity of our critical infrastructures, financial institutions, businesses and individuals, the vulnerability of all these entities in cyberspace also increases manifold. The level of connectivity, and the attendant vulnerability is bound to increase with the advent of Internet of Things (IoTs) and 5G connectivity. // Internationally, along with traditional forms of threats in cyberspace like hacking, spying and theft of critical data, a number of new forms of threats have risen in the recent past such as interference in national or local electoral process by propagation of targeted information which may sway public opinion, attacks on critical infrastructures, etc. // In the recent past, a number of issues related to security of cyberspace have come up as challenges to national security and stability. Financial crimes, identity and monetary theft via cyber tools, fake news propagation, election interference, inflammatory messages on social media leading to social and civil unrest, propagation of obscene material over cyberspace, online radicalization of youth, etc are issues that increasingly threaten the safety, security and stability of nations. // In the near future, threats in cyberspace are bound to increasingly focus on emerging technology like IoT, 5G, AI, crypto-currencies, etc. given the very rapid pace of technological advancement.

4.17 In response to a question on the various international and regional instruments directly impinging on international cyber security and the role and status of India in these instruments, the Ministry of External Affairs stated that some of the international and regional instruments directly impinging on international cyber security are Paris call, Budapest Convention, the Code of Conduct for international information security i.e. IIS as an official UN document also called the 'SCO Code of Conduct' as an official UN Document (submitted in January, 2015 by the SCO Member States), instrument under ASEAN. // India has not joined Paris call, nor Budapest Convention. India looks forward to a multi-lateral instrument on cyber security under the aegis of UN. // Pursuant to its resolution 74/247 of 27 December 2019, entitled "Countering the use of information and communications technologies for criminal purposes", the General Assembly decided to establish an open-ended ad hoc intergovernmental committee of experts, representative of all regions, to elaborate a comprehensive international convention on countering the use of information and communications technologies for criminal purposes. // It was also decided in the same resolution that the Committee should convene a three-day organizational session to agree on an outline, modalities for its further activities and appointing Chair and Vice-chair and it has been scheduled in New York in January 2020.

4.18 On whether the Convention on Cybercrime of the Council of Europe, also known as the Budapest Convention, is the only binding international instrument on cyber security and whether India contemplating to become its Member, the Ministry submitted in a written reply that Budapest Convention (European Convention on Cybercrime) is regional initiative of Council of Europe and most of the European nations. A few non-EU members are also its signatories. The Convention is the only binding international instrument on cyber crime. // While India supports the objectives of the Budapest Convention in principle, we consider it as a regional initiative and have reservations about some of the provisions of the Convention. We believe that the Convention should be more broad-based to be internationally applicable and acceptable. Besides, not all signatories have ratified the Convention yet since last few years that include countries such as Iceland, Sweden etc. Further, though it sprung at the multilateral platform of the Council of Europe, the Convention didn't originate under the aegis of UN that explains its non-acceptance in the large part. We may examine the Budapest Convention more closely after the deliberations of the Data Protection Bill 2019.

4.19 **The Committee are aware of the rising profile of cyber security threats which are in the form of financial crimes, identity and monetary theft via cyber tools, fake news propagation, election interference, inflammatory messages on social media leading to social and civil unrest, propagation of obscene material over cyberspace, online radicalization of youth, etc. these increasingly threaten the safety, security and stability of nations. The Committee, however, note that the efforts of the Ministry of External Affairs and other concerned agencies at various international and regional instruments**

on international cyber security seem lagging due to the exclusive groupings between countries on a regional level or for Geo-political reasons. The Committee while appreciating the Country's reliance on the processes under the UN for intergovernmental committee of experts towards a comprehensive international convention, feel that India given its rich resources in IT must attempt to leverage it to secure its interests by gaining entry into the various regional instruments of collaboration on cyber security. They recommend that the Ministry of External Affairs must explore all the possible ways to secure the cooperation of countries with established multi-lateral and regional instruments of cooperation on cyber security protocols through enhanced diplomatic efforts. They further desire that the Ministries concerned must work ceaselessly to find alternative fool proof mechanisms of securing our cyber space.

(Recommendation No. 9)

4.20 When asked about the status of India's collaboration with ICANN (Internet Corporation for Assigned Names and Numbers), whether India signed a Registrar Data Escrow (RDE) Agreement with I-CANN Designated RDE team and how safe our Data is with I-CAAN without India having a say in its operation and management, the Ministry of Electronics and Information Technology submitted in a note as follows:

“ICANN has delegated Internationalized Domain Names (IDNs) in all Indian 22 official languages. Internationalized Domain Names (IDNs) are domain names represented by local language characters. Such domain names could contain letters or characters from non-ASCII scripts (for example, Hindi or Gujarati).

Benefit of IDNs:

- Facilitates interaction with locals in their native languages.
- Promotes usage of local language content.
- Promotes reach of Internet in remote & far flung villages.
- Enables bridging of the Digital Divide.
- Helps in increasing the diversity of Internet through introduction of multilingual address.

One can have domain names in his/her local language for example in Hindi, that the domain name will look like www.रजिस्ट्री.भारत // ICANN along with FICCI - Indian Language Internet Alliance (FICCI-ILIA has been playing a major role in bringing the importance and significance of adopting the practice of Universal Acceptance and implementing technologies like Internationalized Domain Names and Multilingual Generic Top-Level Domain Names (gTLDs) to enable a Multilingual Internet for Indians in India and across the globe. ICANN has authority to design, delegate,

manage and operate gTLDs and ‘country code top-level domain’ ccTLDs in the world..in ccTLD operations by ICANN has been delegated to National Internet Exchange of India (NIXI) as the registry operator in India. The Govt. of India delegated the operations of INRegistry to NIXI in 2004 which was subsequently evaluated and approved by IANA (ICANN) and is listed in its Root zone database-<https://www.iana.org/domains/root/db/in.html> // Registrar Data Escrow (RDE) Agreement is a tripartite agreement involving individual Registrar, Registrar Data Escrow Agent (DEA) and ICANN. *As established in the RAA and described herein, Registrar will send to Escrow Agent domain name registration records for each registered domain name with a generic top- level domain ("gTLD") under Registrar's sponsorship, in accordance with the RDE Specifications, as may be amended by ICANN from time to time.* // Data Escrow is the act of storing domain registration (WHOIS) data with a neutral third party in case of registry or registrar failure, accreditation termination, or accreditation relapse without renewal. ICANN requires all gTLD registrars and registries to contract with a data escrow provider in order to safeguard registrants. // ICANN accredited Registrars are required by their RAA (Registrar Accreditation Agreement) to escrow registration data of domain names with an ICANN - approved (or ICANN designated) Registrar Data Escrow Agent (DEA) pursuant to the Registrar Data Escrow (RDE) program as defined by the RDE Specifications.

4.21 In response to the specific query regarding various issues, stakeholders, institutions and challenges relating to global discussions on cyber security, MEITY replied that issue and challenges relating to global discussions on cyber security are (i) cooperation issues among countries on existing and potential cyber threats (ii) norms, rules and principles of responsible State behaviour in cyberspace (iii) impact of cyber crime & cyber terrorism on national, regional, international peace and security (iv) IoT security, (v) post quantum cryptography etc. These issues are discussed at various International forums such as United Nations Group of Governmental Experts (UNGGE), Open-Ended Working Group (OEWG), Internet Corporation for Assigned Names and Numbers (ICANN) and Global Forum on Cyber Expertise (GFCE). Indian Computer Emergency Response Team (CERT-In), MeitY is participating in these forums and contributing during discussions on these issues. // The issue of cyber security is being deliberated under various multilateral fora such as G20, BRICS, Shanghai Cooperation Organization (SCO) etc. Under G20, the member countries have been discussing Digital Security / Security in Digital Economy since 2017 in ‘Digital Economy Task Force’. It has been acknowledged that trust and security are vital to harnessing the potential of the digital economy. It has also been recognized that in the context of rapidly expanding digitalization and the spread of advanced technologies, enhancing security in the digital economy is increasingly important. Recognizing that security in the digital economy, the G20 member welcomed the ‘G20 Examples of Practices Related to Security in the Digital Economy’ which highlights governmental programs and initiatives. Under BRICS, an Agreement between the Governments of the BRICS States on Cooperation on Ensuring

Security in the Use of Information and Communications Technologies was deliberated which was led by Ministry of External Affairs (MEA) and Ministry of Electronics & Information Technology (MeitY) has provided relevant comments/ inputs on the same.

4.22 When asked whether there is any institutional mechanism at the national or state level for reporting of cyber crimes and threats, the Ministry informed the Committee that the Indian Computer Emergency Response Team (CERT-In), Ministry of Electronics & IT (MeitY) operates the 24x7 Incident response help desk wherein organisations and users report cyber security incidents like phishing, website intrusions, malware infection etc. CERT-In provides technical advice and remedial measures to resolve the cyber security incidents. // National Cybercrime Reporting Portal is an initiative of Government of India to facilitate victims/complainants to report cyber crime complaints online 24x7. A portal “cybercrime.gov.in” is operational under MHA for reporting of cyber crimes online. // The portal caters to complaints pertaining to cyber crimes only with special focus on cyber crimes against women and children. Complaints reported on this portal are dealt by law enforcement agencies/police based on the information available in the complaints. In the last one year more than 2 Lakhs Cyber incidents have been reported on portal and more than 3500 FIR registered. Action on complaints pertains with States/UTs matter.

4.23 Regarding the security of critical security infrastructure, the sectors identified as critical security infrastructure and the steps being taken by the concerned Ministries to protect critical security infrastructure from cyber threats, the (MeitY) replied that sectors identified as critical security infrastructure are Transport, Power & Energy, Telecom, Government, Banking, Financial Services & Insurance (BFSI) , Strategic & Public Enterprises. // CERT-In, MeitY is taking following measures for enabling Ministries to protect critical information infrastructure:

- a. Government has formulated a Cyber Crisis Management Plan (CCMP) for countering cyber attacks and cyber terrorism for implementation by all Ministries/Departments of Central Government, State Governments/ UTs & their organizations and critical sectors. Guiding template have been published to assist development and implementation of sectoral Cyber Crisis Management Plan. CERT-In is conducting workshops, providing advice and assisting entities in implementation of CCMP.
- b. Cyber Crisis Management Plan (CCMP) for countering cyber threats and cyber terrorism has been developed by 37 Central Government Ministries/ Departments, 17 States/ UTs and 57 attached offices and critical sector organisations so far.
- c. To enable and assess cyber security posture of organizations and effectiveness of CCMP implementation, Cyber security exercises are being conducted regularly by CERT-In for Government and critical sectors organisations.
- d. CERT-In is proactively collecting and sharing tailored alerts with various organisations across sectors and stakeholders to enable active threat prevention.

- e. CERT-In conducts regular training programmes for network/system administrators and Chief Information Security Officers (CISOs) of Government and critical sector organisations regarding securing the IT infrastructure and mitigating cyber attacks.
- f. CERT-In is enabling setting up of Computer Security Incident Response Teams (CSIRTs) and coordinating incident response across sectors. Sectoral CSIRTs are operational in Defence, Power and Finance sector.

4.24 When asked about the major issues on which the international norms on a global architecture of cyber space is being negotiated and the role India is envisaged to play in it, MeitY in their reply submitted the following details:

“CERT-In, MeitY is participating in following international forums and providing inputs for discussions:

A. UNGGE and OEWG

CERT-In has been a member of United Nations Group of Governmental Experts on Information Security (UNGGE) and Open-Ended Working Group (OEWG) to contribute to cyber norms development process with a view to promoting common understanding among UN member states on the existing and potential cyber threats; practical cooperative measures to address them and how international law applies to ICT domain, including developing a consensus on attribution of cyber attacks, legality of use of countermeasures as well as norms, rules and principles of responsible behaviour of States, confidence building measures and capacity building. In addition issues are discussed related to impact of cybercrime and cyber terrorism on national, regional and international peace and security for international cooperation so as to facilitate building trust and confidence among member states, thereby contributing to international peace and security.

B. ICANN

CERT-In is a member of the Second Security, Stability, and Resiliency (SSR2) of the Domain Name System (DNS) Review Group, which is mandated by Internet Corporation for Assigned Names and Numbers (ICANN) By laws Section 4.6(c) to examine how effectively ICANN is meeting its commitment to enhance the operational stability, reliability, resiliency, security and global interoperability of the systems/processes (internal/external) that affect the Internet's unique identifiers.

C. WASSENAAR AGREEMENT

CERT-In is a part of the Inter Ministerial Working Group for the WASSENAAR Agreement to which India became a signatory on 8 December 2017. CERT-In has been providing technical inputs for dual use goods and technologies while understanding risks associated with transfer of such items specifically with respect to proposals on Internet of Things & connected devices and post-quantum cryptography.

D. GFCE

CERT-In has been participating in Global Forum on Cyber Expertise (GFCE) which is working towards global Capacity Building Measures in cyber security. CERT-In conducted a scenario based interactive exercise with regards to enhancing cross-sector collaboration in countering these threats, key challenges such as awareness across sectors, political will, willingness to share information (e.g. the financial sector), ownership, trust and privacy, (external) media management, were highlighted. The exercise gave participants from countries which do not yet have a CSIRT an important understanding of the complexity of building out an incident response program. For participants from countries having a CSIRT, the workshop provided them with an insight of the gaps that may exist in their existing policy and / or engineering side as well as issues that may need to be addressed from a cross border perspective.

CERT-In also participated in various GFCE working groups namely Cyber Security Policy & Strategy, Cyber Incident Management & Critical Information Protection, Cybercrime, Cyber Security Culture & Skills and Cyber Security Standards.

4.25 On the role played by the Computer Emergency Response Team (CERT-IN) in effectively dealing with cyber security issues, it submitted in a written reply that CERT-In, MeitY is serving as nodal agency for cyber security incident response. The following actions are taken to effectively deal with cyber security issues:

- i. CERT-In is operating 24X7 Incident Response Helpdesk. Organisations and users report cyber security incidents like phishing, malware infections, website intrusions, Denial of Service attacks etc to CERT-In. CERT-In proactively tracks various incidents by obtaining inputs from Cyber Swachhta Kendra and National Cyber Coordination Centre and through collaboration with Industry. To resolve cyber security incidents CERT-In coordinates incident response actions with relevant stakeholders such as affected organisations, service providers, product and security companies, law enforcement agencies, international CERTs, regulators and stakeholders.
- ii. CERT-In issues alerts and advisories regarding latest cyber threats/vulnerabilities and countermeasures to protect computers and networks on regular basis. A total number of 276, 451, 444, 806 alerts and advisories were issued during the year 2017, 2018, 2019 and 2020 (till September) respectively.
- iii. CERT-In is proactively collecting, correlating, contextualising, analysing and sharing tailored alerts with various organisations across sectors and stakeholders to enable active threat prevention. 811 tailored alerts were shared with key organisations during 2017 to 2020 (till September)
- iv. CERT-In is doing empanelment of Information security auditing organisations to support and audit implementation of Information Security best practices.
- v. CERT-In is enabling formulation and implementation of Cyber Crisis Management Plan (CCMP) for countering cyber attacks and cyber terrorism for implementation by all Ministries/ Departments of Central Government, State Governments and their organizations and critical sectors.

- vi. Cyber security mock drills are being conducted by CERT-In regularly to enable assessment of cyber security posture and preparedness of organisations in Government and critical sectors such as Finance, Defence, Power, Telecom, Transport, Energy, Space, IT/ITeS, etc participated.
- vii. CERT-In conducts regular training programmes for network / system administrators and Chief Information Security Officers (CISOs) of Government and critical sector organisations regarding securing the IT infrastructure and mitigating cyber attacks.
- viii. CERT-In imparts training for law enforcement agencies and judiciary through workshops organised on computer forensics and mobile device forensics through lectures, demonstrations and hands on practical sessions, which covers seizing, preservation, imaging and analysis of the data retrieved from the digital data storage devices. CERT-In also provides support to the other training institutes in imparting training by delivering lectures with demonstrations on various aspects of cyber forensics.
- ix. The Cyber Swachhta Kendra (Botnet Cleaning and Malware Analysis Centre) has been operationalised by CERT-In in February 2017. The centre is providing detection of malicious programs and free tools to remove the same for citizens and organisations.
- x. Cyber security cooperation arrangements in the form of Memorandum of Understanding (MoU) have been signed between CERT-In and its overseas counterpart agencies for collaborating and providing swift response to critical cyber incidents. At present, CERT-In has active MoUs with Australia, Bangladesh, Brazil, Estonia, Finland, France, Israel, Japan, Seychelles, Singapore, South Korea, United Kingdom and Vietnam.
- xi. CERT-In is member of global Forum of Incident Response and Security Teams (FIRST). This membership enables CERT-In to seek support in providing effective response to various critical cross border security incidents.
- xii. CERT-In is member of Asia Pacific Computer Emergency Response Team (APCERT). APCERT maintains a trusted contact network of computer security teams in the Asia Pacific region to improve the region's awareness and competency in relation to computer security incidents. CERT-In as convener is leading of two technical working groups across Asia Pacific CERTs namely "Internet of Things (IoT) Security" and "Secure Digital Payments" to evolve best practices and procedures for handling incidents in these domains.

4.26 When specifically asked about the mechanism established for sharing of information with the State governments regarding the inputs from various international meetings on cyber security, the Ministry submitted that CERT-In is member of Forum of Incident Response and Security Teams (FIRST) and Asia Pacific CERTs (APCERT). Cyber security cooperation arrangements in the form of Memorandum of Understanding (MoU) have been signed between CERT-In and its overseas counterpart agencies. As part of activities under these Multilateral and Bilateral Forums, CERT-In obtains information on latest attack trends,

technical alerts on advanced cyber-attack campaigns, Technical Indicators of Compromises (IoCs), Tactics, Techniques and Procedures of various attacker groups. Further, information on security advisories on critical vulnerabilities and best practices for mitigating risks are also obtained. Based on above information, CERT-In sending tailored alerts and advisories to CISOs of State government departments for enabling measures to prevent cyber threats.

4.27 When asked whether India has signed MoUs with other countries for sharing of data and information on cyber threats and risks, the Ministry replied that Cyber security cooperation arrangements in the form of Memorandum of Understanding (MoU) have been signed between CERT-In, MeitY and its overseas counterpart agencies. // At present, CERT-In has active MoUs with Australia, Bangladesh, Brazil, Estonia, Finland, France, Israel, Japan, Seychelles, Singapore, South Korea, United Kingdom and Vietnam. // The following activities are carried out under the MoUs:

- A. Information exchanges and cooperation for incident response
 - a. Exchange of information on latest cyber threats as and when they are observed
 - b. Exchange of information on latest attack trends, technical alerts on advanced cyber-attack campaigns, technical Indicators of Compromises (IoCs), tactics, techniques and procedures of various attacker groups
 - c. Security advisories on critical vulnerabilities and best practices for mitigating risks.
 - d. Incident reporting and escalation for resolution of incidents
 - e. Conducting periodical Videos Tele Conferences (VTCs)//Teleconferences/ Face to Face meetings for sharing experience on incident handling and discussing strategies for handling emerging cyber threats

- B. Capacity Building
 - a. Bilateral cyber security exercises to reinforce incident response procedures and testing escalation mechanism
 - b. Participating in cyber security drills conducted by Asia Pacific CERT (APCERT) and ASEAN CERTs Incident Response Drill (ACID) and The Organisation of The Islamic Cooperation – Computer Emergency Response Teams (OIC-CERT) for strengthening cyber security preparedness
 - c. Conducting Joint workshops and training on latest technologies related to:
 - Security of ICS/SCADA systems
 - Android secure coding practices
 - Cyber Defense Exercise with Recurrence (CYDER) using technologies such as cyber range
 - Training programs conducted under APCERT Training Working Group

4.28 When asked about the mechanism for coordination and cooperation between various Ministries, the Ministry informed the Committee that National Cyber Security Coordinator

(NCSC) under National Security Council Secretariat (NSCS) coordinates with different agencies at the national level for cyber security matters. // Government has set up National Cyber Coordination Centre (NCCC) to generate necessary situational awareness of existing and potential cyber security threats and enable timely information sharing for proactive, preventive and protective actions by individual entities. Phase-I of NCCC has been made operational. // CERT-In, MeitY has formulated Cyber Crisis Management Plan for countering cyber attacks and cyber terrorism for implementation by all Ministries/ Departments of Central Government, State Governments and their organizations and critical sectors. // Cyber security mock drills are being conducted regularly to enable participating entities from Government and critical sectors to assess their preparedness and cyber security posture to deal with cyber security incidents.

4.29 Replying to queries on the coordination mechanisms between various stakeholders in government on cyber security enforcement, the representative of the Ministry of Home Affairs stated during the oral evidence:

“At national level, we have a committee under national cyber crime coordination coordinator. So, it is under National Security Council and all stakeholders including MHA meet there to discuss the issues. In MeitY, they monitor internet traffic coming to India and if they find any malicious activity, they take action. Response is also given and alert is also raised. We have national critical information infrastructure protection centre. So, six sectors are identified as critical information infrastructure. So they take care of these sectors. These are Government sectors, power sector, telecom etc. Then we have set up Indian cyber crime coordination centre...There was no institutional mechanisms at all-India level where anybody can report about cyber crimes. Now, interestingly, cyber crime is not a defined term under the Indian legal system. These are offences broadly under two categories – one where computers and networks are used to commit a crime or sometimes when they are targets. So, to have a national level reporting mechanism, we have started this coordination centre. So, portal is there. It is in place for the last one year. Hon. HM had inaugurated it. Less than two lakh cyber crimes have been reported through this portal. Interestingly, what we have done is, all States and UTS are part of this because ultimately crime is a State subject that needs to be taken up by them. So, 30 States have set up regional cyber crime coordination centres also. Remaining States also have appointed nodal officers. So, when a cyber crime incident is reported, it is immediately accessible to all the concerned officers of jurisdiction and they are supposed to take action. Through this system, more than 3,000 FIRs have also been lodged. We have data available about these things. So, coordination mechanism is there.”

4.30 When asked about the status of India’s collaboration with ICANN (Internet Corporation for Assigned Names and Numbers) and whether India signed a Registrar Data Escrow (RDE) Agreement with I-CANN Designated RDE team and also on how safe our

Data is with I-CANN without India having a say in its operation and management, the Ministry in a written note to Committee informed that ICANN has delegated Internationalized Domain Names (IDNs) in all Indian 22 official languages. Internationalized Domain Names (IDNs) are domain names represented by local language characters. Such domain names could contain letters or characters from non-ASCII scripts (for example, Hindi or Gujarati).

Benefit of IDNs:

- Facilitates interaction with locals in their native languages.
- Promotes usage of local language content.
- Promotes reach of Internet in remote & far flung villages.
- Enables bridging of the Digital Divide.
- Helps in increasing the diversity of Internet through introduction of multilingual address.

One can have domain names in his/her local language for example in Hindi, that the domain name will look like `www.रजिस्ट्री.भारत`

ICANN along with FICCI - Indian Language Internet Alliance (FICCI-ILIA) has been playing a major role in bringing the importance and significance of adopting the practice of Universal Acceptance and implementing technologies like Internationalized Domain Names and Multilingual Generic Top-Level Domain Names (gTLDs) to enable a Multilingual Internet for Indians in India and across the globe.

ICANN has authority to design, delegate, manage and operate gTLDs and 'country code top-level domain' ccTLDs in the world..in ccTLD operations by ICANN has been delegated to National Internet Exchange of India (NIXI) as the registry operator in India. The Govt. of India delegated the operations of INRegistry to NIXI in 2004 which was subsequently evaluated and approved by IANA (ICANN) and is listed in its Root zone database-<https://www.iana.org/domains/root/db/in.html> ...Registrar Data Escrow (RDE) Agreement is a tripartite agreement involving individual Registrar, Registrar Data Escrow Agent (DEA) and ICANN. *As established in the RAA and described herein, Registrar will send to Escrow Agent domain name registration records for each registered domain name with a generic top-level domain ("gTLD") under Registrar's sponsorship, in accordance with the RDE Specifications, as may be amended by ICANN from time to time.....*Data Escrow is the act of storing domain registration (WHOIS) data with a neutral third party in case of registry or registrar failure, accreditation termination, or accreditation relapse without renewal. ICANN requires all gTLD registrars and registries to contract with a data escrow provider in order to safeguard registrants....ICANN accredited Registrars are required by their RAA (Registrar Accreditation Agreement) to escrow registration data of domain names with an ICANN - approved (or ICANN designated) Registrar Data Escrow Agent (DEA) pursuant to the Registrar Data Escrow (RDE) program as defined by the RDE Specifications.

4.31 Responding to queries on whether India is represented on the ICANN Board, the Ministry representative stated during the oral evidence on 27th August, 2020:

“We did have an Indian on the Board from 2006 to 2012. Currently, the Board has 21 Members of which 15 Members have the voting rights and 6 are non-voting liaisons. There is a Nominating Committee which selects these Board Members. So, we do have a major case that we should have a Member on the Board because we are a major internet using nation and we have the second largest internet using population.”

4.32 Asked whether we have incorporated emerging technologies such as machine learning and artificial intelligence to communicate about possible cyber threats and to provide the details thereof, MEITY submitted in a written response that tools and solutions are being used by CERT-In, MeitY for Cyber Threat intelligence and Situational awareness which use Artificial intelligence and Machine Learning technologies. These technologies are being used for prioritizing Indicators of Compromise, security metadata event analysis and classification of malicious code. // National AI Portal has been implemented as a one stop online portal for AI related developments in India, sharing of resources details of start-ups, investment funds in AI, companies and educational institutions related to AI in India. // Future Skill PRIME programme has been approved by MeitY with the objective to create a re-skilling/up-skilling ecosystem for B2C in emerging and futuristic technologies. The programme would provide re-skilling/ up-skilling opportunities in 10 Emerging Technologies – Virtual Reality, Internet of Things, Big Data Analytics, Artificial Intelligence, Robotic Process Automation, Additive Manufacturing/ 3D Printing, Cloud Computing, Social & Mobile, Cyber Security and Blockchain, to facilitate continuous skill as well as knowledge enhancement of the professionals in line with their aspirations and aptitude in a self-paced digital skill environment. // Reality and Augmented Reality (VR and AR) have massive innovation potential across a wide range of industries and research fields. This research and innovation is currently in domains across a range of industries including such as product and skill development, Health and medical science, art and architecture, transport, construction, tourism, entertainment, education, and productivity software. Government of India in partnership with Government of Odisha, Software Technology Parks of India (STPI), IIT-Bhubaneswar and a philanthropist has recently established Centre of Excellence for Virtual and Augmented Reality (VARCoE) at IIT-Bhubaneswar.”

4.33 When asked if the CERT-IN is reactive or proactive, the Ministry representative during evidence averred:

“Sir, if you go by its name, that is, Indian Computer Emergency Response Team, it becomes reactive. We do reactive things as and when incidents occur. We also provide best practices for others to make sure that they are safeguarded once we learn from whatever happened in the incident and what was breached...The second part is the proactive part. We have the National Cyber Coordination Centre in place which lets us look at the traffic data, metadata, and with that, we are able to look at what are the things which are about to emerge, whether in terms of distributed denial of service attacks or in terms of outbreaks of malwares and bots, and we are able to inform the necessary organisations to take appropriate steps. It could be attacks which are going to

emerge at an organisation level, it could be at a sectoral level or it could be across the country. So, we are in a position to let them know what is happening and what needs to be done, and if something has to be done at ISP level, we also inform the ISPs. So, to answer your question, I would say, yes, we are both proactive as well as reactive. That is why, the advisories that we provide, and also the indicators of compromise for the people to safeguard themselves are both proactive as well as reactive.”

4.34 Elaborating the efforts at capacity building to fight cyber crime, the representative of the Ministry of Home Affairs during evidence submitted:

“So, in MHA, we are dealing with capacity building also. We realized that not only police officers, but even judges and public prosecutors need training. So, under this scheme, we are training them also. More than 15,000 such officers have been trained. Under NCRB, we have started a MOOC platform i.e. massive, open online training content is available for these officers. They can join sitting at their respective places and as per their convenience. This training is about awareness about investigation. The professional courses are available for them.”

4.35 On the legal framework to tackle cyber crime, the representative further stated:

“As far as legal framework is concerned, presently we are having Information Technology Act. So, certain offences have been defined there. Even cyber security as a term has been defined there. So, under Section 43, we have certain offences. These are civil in nature. Under Section 66, they become if something is done fraudulently or intentionally. Then even for impersonation, breach of privacy, some provisions are there. Then what happens is even in case of cyber crimes, other sections of other Acts are also applied like from IPC or from any other Acts.”

4.36 Replying to questions on the reason for India not having any of the root servers, the MEITY representative during evidence stated:

“At present, there are 13 root servers in the entire world out of which ten are in the US. There is one each in Netherlands, Sweden and Japan. But I would like to mention here that, in addition to these 13 root servers, there are over 560 instance root servers placed all over the world. India has nine such instances out of which three have been sponsored by NIXI which is a native organisation. These are located in Mumbai, Delhi and Gorakhpur. The functions of these instances are through a technique called Anycast. They can exist on the same IP address as the 13 original root servers and they can resolve the traffic for domain name system within the country’s borders. They help us in ensuring that latency is decreased to the extent possible and all the resolution of DNA system takes place within the borders. But there is a case that India should have a root server. For that, I would briefly say that there is a technical issue and there is a reason on why there are only 13 root servers in the world. Each information packet on IP version IV has 512 bytes and each IPV address has 32 bytes. So, technically only 13 root servers can exist because 13×32 becomes 416 bytes and 496 bytes are used for

internet protocol information. Technically, in the current IPV IV system, only 13 original root servers can exist. When we switch to IPV VI which is the next version of IP Indian protocol, that will allow us to have more root servers and we are making efforts to ensure that when the tangent happens which is now happening at a pace, then India will have root servers within its own borders. That is one of the efforts which our country is making at present through the system of Anycast.”

4.37 The Committee had summoned Dr. Gulshan Rai, an expert in cyber security, for advice on 17 December, 2020. Explaining the efforts to gain representation in the internet protocol governing organizations and the challenges, the expert stated:

“As far as the ICANN Board is concerned, you try it very well. We are still trying it. India is still trying there. But they are way sceptical about the Government kind of a thing. Our private sector has to come forward. That is where we have to promote a lobby. In terms of our participation, today we have the Indian representations on many of those committees there. We are trying to get on the ICANN Board. Maybe, in another two-three years, we will be able to succeed. But it has to be a kind of a private member there. The problem is that all the big captains of the IT industry are not active in this. As you have said that they are not active, but they need to be activated there. That is where we need to do that role play with them. The Ministry has to do that.”

4.38 The Committee wanted to understand the importance of having root servers in the country, the possibilities thereof and the alternatives available. The witness submitted:

“Once you have the Internet root server, you can change the traffic; you can modify the traffic; you can block the traffic. That is a strategic kind of application which is there. But there are many more complications which have come up. Time factor is there. I personally feel that regarding the whole root server business, India will not get additional root server because they are not giving it. They change the entire structure there. We will get sub-server. We need to initiate control within our country so that we are able to effectively do what the root server does there...Now, how are some of the countries doing it? They are creating an internal network architecture. It is consolidated trapping at one of the gateways. They put one of the indigenous or domestic root servers. The traffic going out from within the country is all routed within the country. If you today try a search engine or you go to a search engine, say, dot-com, dot-edu, dot-net, when you go, the authentication traffic goes out of the country. So, we need to bring in that kind of a control so that any kind of a dot-com traffic or dot-edu traffic is all routed within the country and it does not go out. Then, we need to bring in some kind of an enforcement control in the law and that is going to be issued in the data protection law also.”

4.39 On the issue of root servers not being in India, and whether it is imperative to have a root server, or whether it is a misplaced priority, he stated:

“Today, we do not have to talk about a root server here. Absolutely, I am 100 per cent and entirely in agreement with you that today we need to have an internal control. How has China done it? How has the Russia done it? How have the Americans done that? They have the control servers there but they control the entire traffic. They route the traffic from one outlet. We have five or seven gateways. We need to restructure our network and route the traffic. This was exactly I was saying. I agree with you 100 per cent. Today, they are not going to give you a root server. You tried it. The hon. Minister tried it. The CERT tried it. We all tried. I was part of the delegation. But we have not been able to succeed. But they do not want to lose their control. There is a geo politics there. So, we need to create our own root server which we take up to the gateway and thereafter, we go there....Today, the whole IP structure needs to be relooked and coordinated. If you want to block, let us say, Maharashtra, you have to block it. If you have to block Mumbai, you have to block the entire Maharashtra because the structures are slightly different. That is what we need to look at today. We have to control those international companies. They are taking the traffic outside. If Google has implemented the RCS protocol right at the Android level, we need to tell Google, look, you have to set up the server. Authentication will happen in India and not outside India. Once my traffic goes outside, then there is a problem. They can do whatever they want to do. They can stop it. Today, you have seen how Google Play Store tried to create problem for the PayTM here. They have removed the App. They stopped the traffic. All kinds of issues are there. These have become a bigger issue. So, I agree with you that we need to look at alternative to root server, assuming we will not get it. But once we set up an alternate structure, they may be able to come forward and give it here because their whole job is over. So, we need to create domestic kind of a gateway.”

4.40 Advocating accreditation rather than stress on localization of data for cyber security, the expert opined:

“It is very difficult to localise any information which is lying on the Internet or on the public network. So, I have been suggesting this. I was a member of the Justice B.N. Srikrishna Committee where we drafted the law. I have been telling them, look, this whole localisation aspect came subsequently. It was not a clause first but that came subsequently from the Ministry. So, we need to be a little more consistent. We do not have to insist on localisation. We have to say that these are my standards like the GDPR has said. The Americans are also coming with a law there. These are my standards which we must look at and it is inconsistent with the international framework. Today we have a *fait accompli*. We are late. So, we need to have a *fait accompli* and incorporate those provisions so that there is accreditation properly.”

4.41 Stressing on the need to create capabilities in the country for gaining control over cyber space, he stated:

“Let me take the example of WhatsApp. We say that from the mobile it gets encrypted. The entire signal goes to the WhatsApp server somewhere in Singapore or in the USA. At that point of time everything gets decrypted because it has to be so. If I am sending

a message to you, then it has to go through you and that server says that it has come from this number. So, it gets decrypted at WhatsApp and then it gets encrypted once again with a certain key....There are great challenges there. I have been to the WhatsApp Centre. The WhatsApp country representative took me there. I had a briefing in the White House ground floor there in 2007, and I came back and I said that everything is being looked by them. In 2009, I had said that it is happening there. They were not trying to show that it is not happening or this is happening, but we know that all these things are happening there today. It is going to be difficult because we do not have a control. Hence, our Hon. Member had said that we need to create our capabilities and without that it is not going to be there.”

4.42 Further explaining the complexities involved in data localization and security, he stated:

“In an electric car which we are going to have in 2025, we are not going to have an engine like this. We are going to have an embedded circuit in the bonnet there. The embedded circuit will be controlled by software devices. The software will be maintained outside the country there. If something goes wrong in the car, we will have to make an international call and they will correct the software, reboot the software. How do we control the data? For Google.com, you will have to go out of the country. How can it be controlled? We need to look at it. We do not have to insist. One of the major problems is that we have said data localization, if I make a call to you whether it is a data call or a voice call or an internet call, there are four parameters. The mobile or any device collects whole lot of parameters like your device number, time factor, geo-location etc. The data gets collected there and there is no provision in that Section that data standard will be defined by the Government. They are collecting whole lot of parameters. I was in IIC one of these days and I tried to make payment there and I put a wrong password and my card got blocked. I telephoned to concerned people to look into the matter. They said I was sitting in IIC and I am having this Master Card and this is the time and I typed the wrong password. This was done at Singapore. How will we control these things? We cannot control those things there. So, it is collecting so many parameters for which we have not made a provision that the Government will define these things that these are the parameters in the localization.”

4.43 The expert also expressed his opinion on the need for the country to rise to leadership position in information technology and related fields like Artificial intelligence in the fast changing lanes of technological progress in the world and stated:

“I said that it is not that we are the great leaders in the Artificial Intelligence. But I said that we among the three countries in the world who have the basic ingredients to become a leader of the Artificial Intelligence. The three basic ingredients are manpower – we have the software programmers; algorithm – we can create those as we have the capability to do that and the third is demand, which is consumption. That is why I said that we have the potential to become a leader.”

4.44 The Committee note that major issues dominating international cyber security concerns and measures discussed during conferences on cyber security relate to developing a consensus on attribution of cyber attacks, legality of use of countermeasures as well as norms, rules and principles of responsible behaviour of States, confidence building measures and capacity building. The Committee also note that unlike physical warfare, the attribution of cyber attacks to attacking entities presents a very complex challenge which needs international accord on acceptable norms as attacking entities can be any party from professional hackers, rogue hackers, military establishments of an enemy nation or non-state actors, etc. The Committee have also examined in detail the difficulties and complexities posed in the cyber sphere by India's lack of control over the root servers. There are 13 root servers in the entire world through which all data on the internet has to pass through out of which ten are in US and one each in Netherlands, Sweden and Japan but none in India. In view of the fact that in the current IP Version IV system only 13 root servers can exist and the root servers are being monopolized through which controlling countries can extract tremendous strategic and security leverages. Thus being a huge concern, the Committee would like that rather than working to achieve data localization which is proving to be impossible in near future, the Ministries concerned must further strengthen our domestic laws on cyber security so that they are consistent with the norms in the international framework and proper accreditation is secured. Further, the Committee also desire that India should gradually proceed in the direction of data localization leveraging its strengths like the huge availability of software programmers, huge capabilities in development of algorithms, etc. to become a leader in cyber space and overcome the monopoly of few countries till the technology switches from IPV IV system to IPV VI when India may have root servers within our borders.

(Recommendation No. 10)

4.45 The Committee note that the Computer Emergency Response Team (CERT-In) and the Information Technology Act are the administrative and legal mechanisms in the country to respond against cyber attacks and to tackle cyber crimes. The Committee are concerned with the reactive disposition of CERT-In since the benefit is greater in pre-empting and preventing possible fraud, cyber attacks and such other cyber crimes. The Committee appreciate the efforts to make the CERT-in mechanism more proactive, but

desire that more effort needs to be devoted and the Ministries concerned must work together to attract adequate talent in IT and software engineering to strengthen the capabilities and capacity of CERT-In. They also recommend that the IT Act, and rules under the Act must be constantly reviewed to address fast changing requirements due to ever evolving technology and progress in the information technology realm to keep the country safe and in a leadership position for international mechanisms and instruments of cooperation.

(Recommendation No. 11)

CHAPTER 5

FINANCIAL CRIMES

5.1 India has several mechanisms in place for domestic co-ordination and co-operation at both the policy and operational levels to identify new and emerging trends and to formulate appropriate responses to tackle financial crimes. A threat assessment regarding terrorism and its financing is undertaken by the Ministry of Home Affairs (MHA) on a regular basis with other relevant agencies. India is a member of Financial Action Task Force (FATF), Asia Pacific Group (APF) and Eurasia Group (EUG). India has always been fully complying with the FATF recommendations from time to time.

5.2 The Anti Money Laundering / Counterfinancing of Terrorism (AML/CFT) regime in India is relatively young. The Prevention of Money Laundering Act, 2002 (PMLA), which came into force in 2005, was further amended in 2009 following an assessment of vulnerabilities in the financial sector, to include Full Fledged Money Changers (FFMCs), Money Transfer Service Providers (MTSP), such as Western Union, and International Payment Gateways (IPG), such as Visa and Master Card. Thus, since mid-2009, India has increased its focus on money laundering and the use of the ML provisions and has progressively expanded and strengthened its preventive measures for the financial sector.

5.3 India continues to be a significant target for terrorist groups and has been the victim of numerous attacks. The Unlawful Activities (Prevention) Act, 1967 (UAPA) was amended in 2004 to criminalise, inter alia, terrorist financing. The UAPA was further amended in December 2008 to broaden its scope and to bring the legislation more in line with the requirements of the United Nations Convention for the Suppression of the Financing of Terrorism (FT Convention). The amendment also established the National Investigation Agency (NIA) which, among other actions, further strengthened the fight against terrorism and its financing. UAPA was further amended in August, 2019 to provide special procedures to deal with terrorist activities, including designation, as a terrorist, of an individual or organisation. The amendment also broadened the scope of terrorist acts dealt by the Act by adding the International Convention for Suppression of Acts of Nuclear Terrorism (2005) in its Schedule. The 2019 amendment also empowered NIA to attach properties acquired from the proceeds of terrorism.

5.4 India has signed the United Nations Convention against Corruption (the Merida Convention) on 9 December 2005. Corruption is one of the predicate offences for money laundering. The Government of India has taken steps at both the policy and law enforcement levels to limit corruption. To that end, India has established a high-level Central Vigilance Commission (CVC), an independent statutory body responsible for laying down strict vigilance norms, which issues guidelines and conducts inquiries in this regard. In principle, the jurisdiction of the CVC extends to all the organisations to which the executive power of

the Union Government extends. The CVC reports to the President through the parliament. Section 8(1) (d) of the Central Vigilance Commission Act, 2003 (CVC Act) restricts its jurisdiction to Group A level officers and other levels of officers as may be notified by the Central Government. The Commission, however, retains its residuary powers to inquire into any individual case in respect of any other employee. Each organisation under the advisory jurisdiction of the CVC has a vigilance unit headed by a Chief Vigilance Officer (CVO). The CVOs act as the extended arms of the CVC and represent the CVC in respect of vigilance matters, particularly, with regard to junior officers who fall outside the jurisdiction of the CVC. The criminal sanctions for corruption (embezzlement and bribery) can be found in the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860 and range from confiscation of property (which is considered a fine) to fixed-term to life imprisonment.

5.5 When specifically asked to provide the definition of financial crimes, the Ministry of External Affairs submitted to the Committee that legally, Financial crime is crime committed against property, involving the unlawful conversion of the ownership of property (belonging to one person) to one's own personal use and benefit.

5.6 On the mechanisms that have been established for domestic co-ordination and co-operation at both the policy and operational levels to capture new and emerging trends and to formulate appropriate responses to tackle financial crimes, the Ministry submitted that India has several mechanisms in place for domestic co-ordination and co-operation at both the policy and operational levels to identify new and emerging trends and to formulate appropriate responses to tackle financial crimes. A threat assessment regarding terrorism and its financing is undertaken by the Ministry of Home Affairs (MHA) on a regular basis with other relevant agencies.

5.7 On the main regulatory provisions and legislation relevant to financial/economic fraud, they submitted that the Anti Money Laundering / Counter financing of Terrorism (AML/CFT) regime in India is relatively young. The Prevention of Money Laundering Act, 2002 (PMLA) came into force in 2005 and was amended in 2009. The Unlawful Activities (Prevention) Act, 1967 (UAPA) was amended in 2004 to criminalize, inter alia, terrorist financing. The UAPA was further amended in December 2008 to broaden its scope and to bring the legislation more in line with the requirements of the United Nations Convention for the Suppression of the Financing of Terrorism (FT Convention).

5.8 When asked as to which authorities have the powers of prosecution, investigation and enforcement in cases of such crimes, what these powers are and what the consequences of non-compliance are, they Ministry submitted in a written reply to the Committee that India has signed the United Nations Convention against Corruption (the Merida Convention) on 9 December 2005. Corruption is one of the predicate offences for money laundering. The Government of India has taken steps at both the policy and law enforcement level to limit corruption. To that end, India has established a high-level Central Vigilance Commission (CVC), an independent statutory body responsible for laying down strict vigilance norms,

which issues guidelines and conducts inquiries in this regard. In principle, the jurisdiction of the CVC extends to all the organizations to which the executive power of the Union Government extends. The CVC reports to the President through the parliament. Section 8(1) (d) of the Central Vigilance Commission Act, 2003 (CVC Act) restricts its jurisdiction to Group 'A' level officers and other levels of officers as may be notified by the Central Government. The Commission, however, retains its residuary powers to inquire into any individual case in respect of any other employee. Each organization under the advisory jurisdiction of the CVC has a vigilance unit headed by a Chief Vigilance Officer (CVO). The CVOs act as the extended arms of the CVC and represent the CVC in respect of vigilance matters, particularly, with regard to junior officers who fall outside the jurisdiction of the CVC. The criminal sanctions for corruption (embezzlement and bribery) can be found in the Prevention of Corruption Act, 1988 and the Indian Penal Code, 1860 and range from confiscation of property (which is considered a fine) to fixed-term to life imprisonment. 15. Civil servants in India mainly comprise officers from All India Services (such as the Indian Administrative Services, the Indian Police Services, the Central Civil Services, etc.). They are subject to disciplinary and conduct rules and governed by All Indian Services (Conditions of Service-Residuary Matters) Rules, 1960 and Central Civil Services (Conduct) Rules, 1964. Moreover, these officers are expected to maintain confidentiality and secrecy under the provisions of the Official Secrets Act, 1923.”

5.9 Responding to queries on the Mechanism in place to tackle financial crimes, the representative of the Ministry of Home Affairs submitted during the oral evidence on 27th August, 2020:

“In case of a financial crime, in limited category where somebody has suffered losses due to credit card, debit card or digital banking, we have created a mechanism within the country where the concerned law enforcement can report that matter to the bank....and the bank can block that money and after sometime, money can be returned. Through this, we have met limited success. Now we want to roll out in an institutional manner across the country. This will be a big relief to the common citizen. Suppose somebody has swindled money, it goes to account A, then to B and C and D. Within a day or so, it goes to 25 accounts or so. It can be blocked even at that point also. That requires coordination amongst all the banks and the RBI. We are working out that system also though we have met with limited success. // You will be happy to note that Cosmos Bank case was an important case where our money of Rs. 70 crores from that bank was taken away by some foreign operators and we have got Rs. 5 crore back from Hongkong Bank. That is the kind of coordination we are having with some of the banks.”

5.10 Mutual Legal Assistance Treaty/ Agreement in Criminal Matters in one of the significant instruments to improve and facilitate effectiveness of contracting countries in the investigation and prosecution of crimes. Regarding MLATS, the Ministry were asked to state the purpose

and process of entering into a Mutual Legal Assistance Treaty. In response it submitted that India presently has MLAT in Criminal Matters with 42 Countries. These agreements are useful in enhancing mutual cooperation between countries in addressing transnational organised crimes and terrorism. Such treaties enable cooperation and assistance to India to counter organised crime, money laundering and related financial crimes.

5.11 Briefing the Committee on the steps taken to strengthen capabilities to tackle financial crimes, the representative of the Ministry of Finance during oral evidence submitted:

“Sir, in the last few years, very significant steps have been taken to strengthen the statutory and administrative framework to tackle various aspects of financial crime. I will just enlist some of them...There is comprehensive and stringent law to curb black money and undisclosed foreign income and assets and imposition of tax act which has come into force on 1st July, 2015. 439 cases have been initiated and the amount totalling is more than Rs. 13,900 crore of undisclosed foreign assets and incomes on which cases have been initiated...We have been doing effective implementation of the Prohibition of Benami Property Transaction Act. As on 30th June, 2020, provisional attachment orders have been passed in more than 2400 benami properties worth of Rs.13,300 crore...Hon. Members will be aware that SIT under the chairmanship of Hon. judge of Hon. Supreme Court has been monitoring the black money matters in domestic as well as international field....The mechanism of Double Taxation Avoidance Agreement(DTAA) was earlier being used only for deciding the taxation domain. Now it is also being used for getting tax related information which can be used for non-tax purposes like bank accounts and other details....India has entered into 95 such agreements with almost all the important countries EU countries of the world. Apart from these 95 DTAAAs, we also have, with other jurisdictions, the Tax Information Exchange Agreement. We have already entered into 21 years and we are also a member of the Multilateral Convention on Mutual Administrative Assistance. Since July, 2015, we have been also, under the Foreign Account Tax Compliance Act of USA, exchanging information with the United States.... As far as the extradition is concerned, the Enforcement Directorate, in the last few years, has been pursuing the case of economic offenders very rigorously. As you kindly observe, out of 21 cases 2 cases have already come; 2 cases are in very advanced stage. Other cases are also being pursued...We have a very excellent coordination with the Ministry of Home Affairs. But there are certain domestic legal requirements of host countries which we are facing. I will request the Enforcement Directorate to specify some issues related to such matters....The Fugitive Economic Offenders Act has been passed only in 2018. 11 cases have already been initiated and the matter is being pursued by the Enforcement Directorate... India signed Customs Mutual Assistance Agreement with 31 countries which includes EU Bloc. So, 31 plus many more countries have been included in it. We are in stage of negotiation with 17 more countries. In the last two years, more than 650 requests of information exchange on custom issues have been exchanged with other countries. India is a very active member of World Customs Organisation. We have been participating also in Customs Enforcement Network to

mine data for customs and other cross-border illicit trafficking and other financial crimes. I will request Director of Enforcement Directorate to give some specific details.

5.12 During the oral evidence on 27th August, 2020 when asked about details of confiscations of property so far under the Fugitive Economic Offenders Act, the representative of Enforcement Directorate stated:

“This is an Act of 2018 and we have filed 11 petitions for declaring a person fugitive offender. Out of that, in two cases the order has been passed; in one case, the asset worth of Rs. 358 crore and in one case, the person has been declared as a fugitive offender, then the confiscation of assets process started, they went to the superior court and the proceedings are going on. So, in all the cases the matter is under active consideration by the special court; it is not that there is no progress; in all the cases, progress is being made....A related question to this was whether the limit of Rs. 100 crore should be reduced or not. At this point of time, in most of the cases of fugitive offender, the amount involved is more than that. So, as and when ... we find that even a person .. having proceed of crime less than Rs. 100 crore is a fugitive offender, then, at that point of time, this issue will be reviewed.”

5.13 On the role of Enforcement Directorate in tackling Financial Crimes, the ED representative during evidence submitted:

“As of now, we are implementing three Acts, one is the Foreign Exchange Regulation Act, second is the Fugitive Offenders Act and third is the Prevention of Money Laundering Act (PMLA). With regard to the framework as to who files the prosecution complaint and how the matter is being investigated, India is divided broadly in five zones and each zone is headed by a Special Director rank officer who is in-charge of giving permission to file the prosecution complaint in each case. They are empowered to do arrest or seizure and they can take their own decision.”

5.14 Clarifying to on the queries relating to the definition of financial crime, the ED representative also submitted:

“Financial crime basically covers money laundering, terror financing, drug trafficking and financing of drugs and tax evasion. With regard to money laundering, which is a core area of the PMLA, there is an international standard in the form of Financial Action Task Force. So, when it comes to the definition of money laundering, all the member countries will have the same definition because there is an international understanding, an agreement that we will have a common definition of money laundering.”

5.15 Explaining the role of CBDT in fighting financial crime, the representative of CBDT during evidence stated:

“Sir, so far as the involvement of CBDT in solving the financial crimes is concerned, apart from the domestic tax evasion which CBDT is primarily concerned with, we also deal with the administration of the Black Money (Undisclosed Foreign Income and

Assets) and Imposition of Tax Act, 2015 as also the administration of the Prohibition of Benami Property Transaction Act, 1988.... As on 30.6.20, under Section 10 (1) of the Black Money Act, almost notices were issued in 439 cases where the undisclosed foreign assets or income is to the tune of Rs. 13,900 crore and out of these, almost in 96 cases prosecutions have also been launched.”

5.16 In a reply to a query on how many references have been made abroad seeking information about financial assets located outside, the representative further informed the Committee:

“In all, so far, we have made request in 3,225 cases out of which we have received response in almost 2,085 cases. Many times, we face difficulty in explaining to them as to whether the request which has been is also covered under the domestic law of that jurisdiction or not. But gradually we are having a better response in terms of the requests which we are making.”

5.17 On the issue of tax evasion by MNCs, the CBDT representative stated:

“In this regard, I would say that India has been taking a very active role in the OECD under the base erosion and profit shifting project. I would like to submit that we will give a very detailed reply on this because India has been playing a very proactive role in trying to formulate some strategy to tax the profits made by the MNCs, particularly in the digital business part of it.”

5.18 Replying to queries about the role of CBIT in fighting Financial Crimes, the CBIT representative while deposing before the Committee on 27th August, 2020 stated:

“DRI is mandated to collect intelligence and investigate financial crimes like outright smuggling, commercial frauds. These smuggling and financial frauds have international linkages, which often require overseas investigation and inquiry in collaboration with foreign customs authority. Also, there is sharing of information between India and other Foreign Customs Administration on a regular basis through customs enforcement network.”

5.19 When asked as to how robust DRI in India is, the representative replied:

“I assure you that the system is very robust; it is one of our premier investigation agencies. We have our own resources to begin with, which comprises human intelligence as well as electronic surveillance. There is coordination with all the domestic intelligence community within the country. As an international cooperation, we are exchanging intelligence with all foreign agencies. So far, our experience has been that our system is fairly robust. Yes, we are continuously doing trend analysis and improving upon whatever we have.”

5.20 Elaborating on efforts towards extraditing Fugitive Economic Offenders and the challenges facing the agencies, the representative of the Ministry of Finance submitted during the oral evidence:

“Sir, we have started sending the extradition request only in 2017. Till date, we have sent extradition request in 21 cases. Two of them fugitive offenders have already returned back to India. In three cases, the extradition proceedings are at advance stages. In the remaining cases, the matter is still under consideration....The main problem in the extradition of the fugitive offenders is that the extradition treaty only requires that the requesting countries should prove the prima facie culpability of the crime. However, most the countries are examining the extradition request in a manner that we should prove the offence conclusively and that is the reason as to why a large number of requests is still pending....The second issue relating to extradition relates to a very limited treaty network which India has with other countries. We have extradition treaties with 43 countries and the reciprocal arrangement with 11 countries. My suggestion is that, we believe that there is a United Nation Convention on Corruption. We have notified the United Nation Convention. But we have only notified Section 44, 46 which do not deal with the extradition of a person. So, a large number of countries are just signatories of multilateral convention. It would be appropriate, if the Section 43 of the United Nation Convention on Corruption is notified which deals with the extradition of fugitive offender. That will be quite helpful both for ED and CBI...We are receiving desirable support both from the Ministry of Home Affairs and the Ministry of External Affairs. But the matters are going through a long-drawn legal process in requested countries. That is the main reason for delay... As far as the Fugitive Economic Offenders Act is concerned, this Act was legislated in 2018. We have filed the request in 11 cases and the competent court has declared two persons as fugitive offenders. As on date, the property of Rs.326.60 crore has been confiscated to the Government of India. In all other cases, the matters are at advance stage and we are hopeful that in coming month, we will be able to get some more cases on fugitive offenders....The requirement in the Fugitive Economic Offenders Act is very simile. If there is non-bailable warrant and we have filed the prosecution complaint, then we can file an application for declaration a person an economic offender.... Another problem which we are facing with regard to extradition is under active consideration of the Ministry of External Affairs. Our treaty provides for extradition of accused. Delhi High Court has examined the issue. The existing circular of the Ministry of External Affairs provides that we can an extradition request only in the cases where prosecution complaint has bene filed...Whereas, our treaty only talks about accused and the Delhi High Court has suggested that accused means a person against whom a non-bailable warrant has been issued. So, there is a need to modify the existing circular because many-a-time we need a person for investigation not only for trial in order to file a legally sustainable prosecution complaint. So, there is a need to revise the existing circular by the Ministry of External Affairs. It should be in tune with the decision of the Delhi High Court, which has remained unchallenged till date.

5.21 Supplementing the above submissions, another representative of the Ministry highlighted the efforts of the Government to prevent financial crimes through cooperation with global fora added:

“In addition to the steps, which have been initiated by the Government -- which have been outlined by Shri Jha -- I would also like to mention one very important area or initiative, which has recently been taken in collaboration with the OECD and G-20 Group that India has been a very pro-active participant in developing a uniform standard for automatic exchange of information and in this we have had a common standard of reporting of financial information, which has been coming to this country now as we are also sharing with the other member countries....Initially, it was with 49 countries, and gradually it has almost doubled and come to about 80 countries. But one very big challenge that we faced in this automatic exchange of information and under the Common Reporting Standard was that the data, which was made available by the member countries did not always conform to the requirements under the domestic law, particularly, in respect to identification, that is, the information relating to the Permanent Account Number or the Tax Identification Number in other countries, but India has been taking a very leading role in trying to evolve those standards and now that commonality has been reached and the data, which now is being shared is more robust and action is being taken against all those persons who are not declaring under the domestic laws.

5.22 The representative of the Customs department also briefed the Committee on 27th August, 2020 about the efforts made at multi-lateral fora and stated:

“Sir, the Customs organisation also has made use of the plural regional multilateral agreements that have been signed by the Indian Government. Customs largely looks at two ends of the spectrum, one is, revenue assurances and the other is both the security and intelligence. We have a premier investigating agency called the Directorate of Revenue Intelligence (DRI). The DRI operates under the framework of India and we, also like OECD and Income Tax, have a world organisation called World Customs Organisation (WCO). We are signatories, and there are 180 countries that have formed this little network of customs organisations that exchange data....With regard to how to use data in modern times, we also have the network called CEN in which the WCO signatories upload the offence cases and they can be shared with other countries. We have 42 multilateral agreement requests and we also have the customs mutual assistance agreements with other countries whereby we exchange data for illicit trade, narcotics, smuggling of gold, even the movement of people and goods, which impinges on health and safety, and for the request that we make through the MHA we have had a very good experience of exchange of data. Yes, sometimes, it takes time to put the legal issues in place, but yet our experience is that we do go forward in exchange of international intelligence in this manner and it has helped us a lot....On the facilitation side, of course, the Committee is not looking at facilitation, but Customs has had Customs Mutual Assistance Agreements with other countries including EU and the Asia-Pacific Region. We assure facilitation of goods, and we also ratify through joint inspections both with the signatory nation coming and visiting us, and us visiting there for seizure of shipment logistics and also thereafter facilitation within the country for our exporters and for their exporters within India. Yes, we are definitely gaining through these mutual agreements

with the multilateral and plural arrangements within the fold of the customs as well as under the MHA umbrella where we send requests for Letters Rogatory as well as MLATs. There are 42 such requests, and for our mutual agreements we have had 651 exchange of data.”

5.23 The representative of the Ministry of Law and Justice (Department of Legal Affairs), during oral evidence clarified:

“So far as the Law Department is concerned, MLATs with 14 countries have been executed. This is in relation to civil agreements. As per allocation of business rules, MLAT Civil is only dealt by the Law Department. This includes the service of summons from the courts falling within the other States. This is a brief presentation that I would like to make at this stage.”

5.24 Briefing the Committee on the Civil Procedure Code as it relates to international law and its various applications, during the evidence the representative of the Legislative Department stated:

“As far as the Legislative Department is concerned, we are looking after the Civil Procedure Code, which contains some provisions relating to the execution of foreign decrees in India and Indian judgements or Indian decrees in foreign courts. Some provisions of CPC contain also to issue a summons in foreign countries and foreign countries to India, reciprocally....It is a well-settled principle of territorial sovereignty, a judgement delivered in one country in the absence of international agreement cannot have a direct operation of its own in another. That is why, unless there is a reciprocal agreement between countries, we cannot execute decrees of foreign countries in India and Indian decrees in foreign countries. That means, wherever there is a reciprocal agreement, these provisions would come into the picture, that is, Sections 29, 44A, and 45 of CPC. Section 44 of CPC provides execution of decrees passed by courts in reciprocation territory. Section 44A states that where a certified copy of a decree of any superior Court of a reciprocating territory are executable as a decree passed by the District Court, especially defines what is meant by reciprocating territory, as noticed by the Central Government. Whereas if the decree does not pertain to the superior court of any reciprocating territory then a fresh suit has to be filed in India on the basis of such a decree or judgement which may be construed as a cause of action for the said suit. However, in both the cases, the decree has to pass the test of Section 13 of the CPC which testifies certain exceptions under which foreign judgements become inconclusive and therefore not executable or enforceable in India. That means Section 13 of the CPC laid down certain conditions only on fulfilment of those conditions, the judgement becomes conclusive. If those elements are not satisfied, then the judgement is inconclusive and that shall not be enforceable in the court of law. For example, Section 13 says, when it has not been pronounced by the Court of competent jurisdiction, where it has not been given on the merits of the case, where the proceedings in which judgement was obtained or opposed to natural justice, where it has been obtained by fraud, where it sustains a claim founded on a breach of any law in force in India. These

are certain conditions laid down in Section 13. Only on fulfilling these conditions, the judgement of foreign country becomes conclusive and enforceable in the court of law. So, the combined reading of Sections 13 and 44A of the Code, it is clear that a decree of a reciprocating territory can be executed to a district court. In the same way, Section 45 of the Code provides for execution of decrees of India in the outside India...Coming to Section 29, which deals with the service of foreign summons in India and Indian service of summons in foreign countries. It says that summons and processes issued by civil or any court established in any part of India to which provisions of this court does not extend or any other civil or any court outside India to which the Central Government have by notification declared that the provisions of this Section to apply, that summons or process issued by those courts may be sent to the court in territories in which this court extends and served as if they were summons issued by such court. In the same way, Order 5 of the Code provides certain procedures for issue and service of summons. Rule 25 of the said Order provides for service where the defendant resides out of India and has no agent in India. As for the said Rule, if the defendant resides out of India and has not an agent in India empowered to accept the service, the summons shall be addressed to the defendant at a place where he is residing and sent to him by post or by courier service as may be approved by the High Court or by fax message or by electronic mail service or any other means provided by the rules made by High Court...Rule 12 of the Order provides for service in the foreign territory through political Agent or Court. Rule 26A provides for a summons to be sent to officers of the foreign countries. This is briefly about CPC provisions.

5.25 The Committee note with satisfaction that efforts of the Government to prevent financial crimes through cooperation with global fora which include collaboration with the OECD and G-20 Group, where India has been a very pro-active participant in developing a uniform standard for automatic exchange of information is making good progress. Further, after initial sharing of financial information with 49 countries, that the number now has doubled to about 80 countries is a good achievement. The Committee urge the Ministry of External Affairs to bring in more and more countries in this network of mutual and automated exchange of financial information critical to fight against financial crimes which are increasingly assuming a trans-border character.

(Recommendation No. 12)

5.26 The Committee are apprised that, under the Fugitive Economic Offenders Act, India have filed 11 petitions for declaring a person a fugitive offender, out of which, in two cases orders have been passed, where assets worth of Rs. 358 crore have been confiscated in one case, and the person has been declared as a fugitive offender in the other. The Committee also note that there is a limit of Rs. 100 Crore as the lower limit of

money involved for proceeding against offenders under this Act. The Committee are of the opinion that the entire judicial process for declaring a person a fugitive offender appears to be very slow and desire that the Ministries concerned must together examine possibilities of simplifying the procedures to expedite the progress in such cases. Further, the Committee feel that the limit of 100 crore as the limit for proceeding against such criminals seem to give a lot of leeway to many smaller offenders and they desire that the matter may be reviewed at the earliest to enable proceedings to be initiated against criminals involving less than 100 crore also.

(Recommendation No. 13)

5.27 The Committee note that the Unlawful Activities (Prevention) Act, 1967 (UAPA) was amended in 2004 to criminalise, inter alia, terrorist financing and further amended in December 2008 to broaden its scope and to bring the legislation more in line with the requirements of the United Nations Convention for the Suppression of the Financing of Terrorism (FT Convention). The amendment also established the National Investigation Agency (NIA) which, among other actions, further strengthened the fight against terrorism and its financing. They also note that UAPA was further amended in August, 2019 to provide special procedures to deal with terrorist activities, including designation as a terrorist, of an individual or organisation. The amendment also broadened the scope of terrorist acts dealt by the Act by adding the International Convention for Suppression of Acts of Nuclear Terrorism (2005) in its Schedule. While the Committee appreciate the various amendments, especially to bring it in line with UN Convention for Suppression of the Financing of Terrorism, they feel that while domestic legislations are important in fighting financial crime, more efforts should be invested in having an international legal framework to tackle such crimes which are assuming increasing transnational and international dimensions.

(Recommendation No. 14)

5.28 The Committee note that India presently has Mutual Legal Assistance Treaties in Criminal Matters with 42 Countries which are useful in enhancing mutual cooperation between countries in addressing transnational organised crimes and terrorism. Such treaties enable cooperation and assistance to India to counter organised crime, money laundering and related financial crimes. India has signed the United Nations Convention against Corruption (the Merida Convention) on 9 December 2005. Corruption is one of

the predicate offences for money laundering. The Committee, therefore, desire that efforts must be made to increase the network of MLATs in criminal matters with countries around the world. They also desire that India should continue to work towards strengthening the Merida Convention of 2005 to enhance cooperation between UN members in matters of international financial crimes involving various players like MNCs, individuals and various online vendor companies, etc.

(Recommendation No. 15)

NEW DELHI
August, 2021

Sravana, 1943 (Saka)

P.P. CHAUDHARY,
Chairperson,
Committee on External Affairs

MINUTES OF THE TWENTY FIRST SITTING OF THE STANDING COMMITTEE
ON EXTERNAL AFFAIRS HELD ON 11 AUGUST, 2020

The Committee sat from 1030 hrs. to 1145 hrs. in Committee Room 'D', Parliament House Annexe, New Delhi.

Present

Shri P.P. Chaudhary – Chairperson

Members

Lok Sabha

2. Smt. Meenakshi Lekhi
3. Shri P.C. Mohan
4. Shri Ritesh Pandey
5. Shri Ravindra Shyamnarayan Shukla *alias* Ravi Kishan
6. Shri Manoj Tiwari
7. Shri N. K. Premchandran,

Rajya Sabha

8. Shri K.J. Alphons
9. Shri Swapan Dasgupta
10. Shri Ranjan Gogoi

MINISTRY OF EXTERNAL AFFAIRS

S.No	Name	Designation
1	Shri Sanjay Bhattacharya	Secretary(CPV & OIA)
2	Smt. Uma Sekhar	Additional Secretary (L & T)
3	Shri Manish Chauhan	Joint Secretary (UNES)
4	Shri Mahaveer Singhvi	Joint Secretary(CT)
5	Shri Robert Shetkintong	Joint Secretary(Parl & Coord)
6	Dr. Adarsh Swaika	Joint Secretary (CPV)
7	Dr. S Janakiraman	Joint Secretary (EG & IT and CD)
8	Shri Abbagani Ramu	Joint Secretary (OIA-I)
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Secretariat

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|----|-----------------|---|-----------------|
| 1. | Shri P. C. Koul | - | Joint Secretary |
| 2. | Dr. Ram Raj Rai | - | Director |

2. At the outset, the Chairperson welcomed the members of the Committee and the representatives of the Ministry of External Affairs (MEA) to the Sitting of the Committee convened to have a briefing on the subject 'India and International Law including its Extradition Treaties with foreign countries, asylum issues, international cyber-security and issues of financial crimes'. The Chairperson also drew attention of the representatives to Direction 55 (1) of Directions by the Speaker, Lok Sabha regarding maintaining the confidentiality of the proceedings.

3. Drawing cues from the opening remarks of the Chairperson, the representatives of the Ministry of External Affairs delved upon issue such as extradition treaties and arrangements; India's cyber-diplomacy strategy; policy relating to asylum seekers and refugees; institutional mechanisms for cooperation on customs, financial data exchange, drug-trafficking; Budapest Convention; ICANN Board, cyber threats and challenges, data privacy and protection etc.

4. During the course of discussion, the Chairperson and the Members raised queries impinging upon India's broad approach to key global issues; structural and functional reforms of United Nations; global efforts to counter terrorism; India's role in major multilateral and plurilateral organizations; power of state governments to enter into international agreements and so on.

5. The representatives of the Ministry of External Affairs responded to the queries raised by the Members. Before the Sitting concluded, the Chairperson directed the witnesses to furnish written replies to the points raised by the members of the Committee

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

**MINUTES OF THE TWENTY FOURTH SITTING OF THE STANDING COMMITTEE ON
EXTERNAL AFFAIRS HELD ON 27 AUGUST, 2020**

The Committee sat from 1100 hrs. to 1405 hrs. in Committee Room 'B', Parliament House Annexe, New Delhi.

Present

Shri P.P. Chaudhary – Chairperson

Members

Lok Sabha

2. Shri Margani Bharat
3. Smt. Meenakshi Lekhi
4. Shri P.C. Mohan
5. Shri Ritesh Pandey
6. Shri Ram Swaroop Sharma
7. Shri Ravindra Shyamnarayan Shukla *alias* Ravi Kishan
8. Shri Manoj Tiwari
9. Shri N. K. Premchandran

Rajya Sabha

10. Shri K.J. Alphons
11. Shri Swapan Dasgupta

MINISTRY OF EXTERNAL AFFAIRS

- | | | |
|---|------------------------|--------------------------------|
| 1 | Shri Vikas Swarup | Secretary (West) |
| 2 | Smt. Uma Sekhar | Additional Secretary (L & T) |
| 3 | Shri Manish Chauhan | Joint Secretary (UNES) |
| 4 | Shri Mahaveer Singhvi | Joint Secretary (CT) |
| 5 | Shri Abbagani Ramu | Joint Secretary (OIA-I) |
| 6 | Shri Rober Shetkintong | Joint Secretary (Parl & Coord) |
| 7 | Dr. S Jankiraman | Joint Secretary (EGIT & CD) |

MINISTRY OF HOME AFFAIRS

1	Shri Anil Malik	Additional Secretary (F)
2	Shri Ashutosh Agnihotri	Joint Secretary (F)
3	Shri Anuj Sharka	Joint Secretary (CIS)
4	Ms. Saheli Ghosh Roy	Joint Secretary (CIC)

MINISTRY OF FINANCE (DEPT. OF REVENUE)

1	Shri P.C. Modi	Chairman (CBDT)
2	Shri Anil Kumar Jha	Additional Secretary (Revenue)
3	Shri Sanjay Mishra	Director (Enforcement Directorate)

MINISTRY OF ELECTRONIC & INFORMATION TECHNOLOGY

1	Dr. Rajendra Kumar	Additional Secretary
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MINISTRY OF LAW & JUSTICE

1	Dr. G. Narayana Raju	Secretary (Dept. of Legislative)
2	Shri K. Biswal	Additional Secretary
3	Shri Anoop Kumar Mediratta	Secretary (Dept of Legal Affairs)
4	Shri R.K. Srivastava	Addl. Legal Advisor
5	Dr. R.J.R. Kashibhatla	Deputy Legal Advisor

SECRETARIAT

1.	Shri P. C. Koul	Joint Secretary
2.	Dr. Ram Raj Rai	Director

2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministries of External Affairs, Home Affairs, Finance (Department of Revenue), Electronics & Information Technology and Law and Justice (Department of Legal Affairs and Legislative Department) to the Sitting of the Committee convened to take oral evidence on the subject 'India and International Law, including its Extradition Treaties with

foreign countries, asylum issues, international cyber-security and issues of financial crimes'. The Chairperson then drew the attention of all the representatives to Direction 55 (1) of Directions by the Speaker, Lok Sabha in order to maintain the confidentiality of the proceedings. The Chairperson also apprised the witnesses about the provisions of Direction 58 of Directions by the Speaker, Lok Sabha.

3. Thereafter, the Representatives of the Ministry of External Affairs presented a broad and comprehensive overview of India's approach towards issues impinging on international law, including extradition, cyber security, financial crimes. Subsequently, the other Ministries briefed the Committee extensively on areas within their mandate.

4. The representatives of the Ministry of Home Affairs delved upon issues such as Mutually Legal Assistance Treaties (MLATSs), Foreigners Act, administrative, institutional and legal framework for asylum seekers etc. Then the Ministry of Electronics & Information Technology (MEITY) gave an exposition of the facets related to cyber-security such as Protection of critical security infrastructure, transnational nature of cyber-security, role of Computer Emergency Response Team (CERT-IN); arrangements for international cooperation on cyber security. Sharing of information and data on cyber threats and risks; capacity building measures and so on.

5. Then, the Ministry of Finance gave an insightful account concerning issues such as Double Taxation Avoidance Agreement (DTAA); UN Convention on Corruption, Fugitive Economic Offenders Act, 2018; status of economic fugitives and offences committed by them; steps taken for strengthening existing statutory and administrative framework; measures for prevention of black money and tax evasion.

6. Finally, the representatives of the Ministry of Law & Justice apprised the Committee about the legal aspects of the subject which *inter alia* included constitutional, statutory and legal provisions relating to treaty making; Civil Procedure Code; judicial pronouncements; foreign summons.

7. The representatives of the various Ministries responded to the queries raised by the Members. Before the Sitting concluded, the Chairperson also directed the witnesses to furnish written replies to the points raised by the Members of the Committee to the Secretariat at the earliest.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

MINUTES OF THE FIFTH SITTING OF THE COMMITTEE ON EXTERNAL AFFAIRS

HELD ON 11 NOVEMBER, 2020

The Committee sat from 1100 hrs. to 1230 hrs in Main Committee Room, Parliament House Annex, New Delhi.

Present

Shri P.P. Chaudhary – Chairperson

Members

Lok Sabha

2. Smt. Harsimrat Kaur Badal
3. Shri Kalyan Banerjee
4. Shri Suresh Kumar Kashyap
5. Smt Meenakshi Lekhi
6. Shri Ritesh Pandey
7. Shri N.K. Premchandran
8. Shri Rebati Tripura

Rajya Sabha

9. Shri K.J. Alphons
10. Shri Swapan Dasgupta

MINISTRY OF EXTERNAL AFFAIRS

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|---|--------------------------|--------------------------------|
| 1 | Shri Sanjay Bhattacharya | Secretary (CPV &OIA) |
| 2 | Smt. Uma Sekhar | Additional Secretary (L & T) |
| 3 | Shri Srinivas Gotru | Joint Secretary (UNES) |
| 4 | Shri Mahaveer Singhvi | Joint Secretary (CT) |
| 5 | Shri Vipul | Joint Secretary (Gulf) |
| 6 | Shri Anil Kumar Rai | Joint Secretary (Parl & Coord) |
| 7 | Dr. S Jankiraman | Joint Secretary (EGIT & CD) |

MINISTRY OF HOME AFFAIRS

1	Shri Anil Malik	Additional Secretary (F)
2	Shri Ashutosh Agnihotri	Joint Secretary (F)

MINISTRY OF FINANCE (DEPT. OF REVENUE)

1	Shri Anil Kumar Jha	Additional Secretary (Revenue)
2	Shri P.C. Modi	Chairman (CBDT)
3	Shri M.Ajit Kumar	Chairman (CBIT)
4	Shri Sanjay Mishra	Director (Enforcement Directorate)
5	Shri Ritvik Pandey	Joint Secretary
6	Shri Rajesh Kumar Bhoot	Joint Secretary (FT &TR)

MINISTRY OF ELECTRONIC & INFORMATION TECHNOLOGY

1	Shri Ajay Prakash Sawhney	Secretary
2	Dr. Rajendra Kumar	Additional Secretary
3	Shri Rajiv Kumar	Joint Secretary

MINISTRY OF LAW & JUSTICE

1	Shri Anoop Kumar Mediratta	Secretary (Department of Legal Affairs)
2	Shri K. Biswal	Additional Secretary (Legislative Department)

SECRETARIAT

1.	Shri Paolienlal Haokip	Additional Director
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2. At the outset, the Chairperson welcomed the Members of the Committee and the representatives of the Ministries of External Affairs, Home Affairs, Finance (Department of Revenue), Electronics & Information Technology and Law and Justice (Department of Legal Affairs and Legislative Department) to the Sitting of the Committee convened to take oral evidence on the subject 'India and International Law, including its Extradition Treaties with foreign countries, asylum issues, international cyber-security and issues of financial crimes'. The Chairperson then drew the attention of all the representatives to Direction 55 (1) of

Directions by the Speaker, Lok Sabha in order to maintain the confidentiality of the proceedings. The Chairperson also apprised the witnesses about the provisions of Direction 58 of Directions by the Speaker, Lok Sabha.

3. At first, the Representatives of the Ministry of External Affairs delved upon issues such as reformed multilateralism; UNSC reforms; internet governance; challenges faced in extradition; mechanism for inter-Ministerial coordination, initiatives to strengthen extradition network and so on.

4. Then the representatives of the Ministry of Electronics & Information Technology (MEITY) presented detailed views on data privacy and protection; new technologies like artificial intelligence, augmented reality, Internet of Things (IoT); Information Technology Act, Global Forum on Cyber Expertise; non-personal data etc.

5. The representatives of the Ministry of Law & Justice apprised the Committee about the legal aspects of the subject which *inter alia* included constitutional, statutory and legal provisions relating to treaty making; sources of international law; Civil Procedure Code; judicial pronouncements; and foreign summons.

6. Subsequently, the representatives of the Ministry of Home Affairs elaborated upon Mutually Legal Assistance Treaties (MLATs) in criminal matters, constitutional and statutory rights enjoyed by foreigners; Foreigners Act, 1946; the Registration of Foreigners Act; administrative, institutional and legal framework for asylum seekers etc.

7. Finally, the Ministry of Finance clarified on definition of financial crime, Prevention of Money Laundering Act; Black Money Undisclosed Foreign Income and Assets Act; Central Excise Act; information-sharing arrangements and so on.

8. During the course of discussion, the Chairperson and the Members raised a number of queries and the representatives of the various Ministries responded to them. Before the Sitting concluded, the Chairperson also directed the witnesses to furnish written replies to the points raised by the Members of the Committee to the Secretariat at the earliest.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

MINUTES OF THE SIXTH SITTING OF THE COMMITTEE ON EXTERNAL AFFAIRS

HELD ON 17 DECEMBER, 2020

The Committee sat from 1100 hrs. to 1230 hrs in Main Committee Room, Parliament House Annexe, New Delhi.

Present

Shri P.P. Chaudhary – Chairperson

Members

Lok Sabha

2. Shri Dileshwar Kamait
3. Smt. Meenakashi Lekhi
4. Smt. Goddeti Madhavi
5. Smt. Poonam Mahajan
6. Shri Ritesh Pandey
7. Shri N.K. Premachandran
8. Shri Soyam Babu Rao
9. Shri Ram Swaroop Sharma
10. Shri Rebatu Tripura

Rajya Sabha

11. Shri K.J. Alphons
12. Shri Swapan Dasgupta

Non-Official Witnesses/Experts

1. Dr. Gulshan Rai
2. Prof. (Dr.) Manoj Sinha

Secretariat

1. Shri Paolienlal Haokip - Additional Director

2. At the outset, the Chairperson welcomed the non-official Witnesses/Experts to the Sitting of the Committee convened to avail their opinion in accordance with the Rule 331L of the Rules of Procedure and Conduct of Business in Lok Sabha and for taking their evidence on the subject India and International Law, including its Extradition Treaties with foreign countries, asylum issues, international cyber-security and issues of financial crimes'. He also drew their attention to Direction (55)1 of Directions by the Speaker, Lok Sabha pertaining to maintaining the confidentiality of the proceedings.

3. After taking oath, the two experts shared their views/suggestions on diverse facets of the subject which *inter-alia* included cyber security and warfare; UN Charter [Article 2(4) and Article 51]; sources of international law; International humanitarian law, human rights

instruments; extradition treaties; Mutual Legal Assistance Treaty (MLAT); UN Convention Against Torture; principle of *non-refoulement* etc.

4. The Members of the Committee then raised pertinent queries impinging on issues such as route servers, 1951 Refugee Convention; artificial intelligence; data localization; trans-border inflow of information; customary international law and so on. The experts responded to the queries raised by the Members of the Committee. Before the Sitting concluded, the Chairperson thanked the witnesses for their valuable inputs on the subject matter.

The witnesses then withdrew.

The Committee then adjourned.

A verbatim record of the proceedings has been kept.

**MINUTES OF THE TWENTY-SEVENTH SITTING OF THE COMMITTEE ON
EXTERNAL AFFAIRS (2020-21) HELD ON 05 AUGUST, 2021**

The Committee sat on Friday, 05 August, 2021 from 1500 hrs. to 1615 hrs. in Committee Room No. '1', Parliament House Annexe, New Delhi.

1. Shri P.P. Chaudhary, Chairperson

Lok Sabha

2. Shri Kalyan Banerjee
3. Shri Dileshwar Kamait
4. Smt. Preneet Kaur
5. Smt. Goddeti Madhavi
6. Shri P. C. Mohan
7. Dr. K. C. Patel
8. Smt. Navneet Ravi Rana
9. Shri Manne Srinivas Reddy

Rajya Sabha

10. Shri K. J. Alphons
11. Smt. Jaya Bachchan
12. Shri P. Chidambaram
13. Shri Brijlal

Secretariat

- | | | |
|---------------------------|---|----------------------|
| 1. Shri P.C. Koul | - | Additional Secretary |
| 2. Dr. Ram Raj Rai | - | Director |
| 3. Shri Paolienlal Haokip | - | Additional Director |

2. At the outset, the Chairperson welcomed the members to the Sitting of the Committee.

3. The Committee took up for consideration the draft Report on 'India and international law including extradition treaties with foreign countries, asylum issues, international cyber-security and issues of financial crimes'.

4. The Chairperson invited the Members to offer their suggestions, if any, for incorporation in the draft Report. The Members suggested some minor modifications. After deliberations the Committee adopted the draft Report with four Members dissenting.

5. The Committee then authorized the Chairperson to finalize the Report incorporating the suggestions made by the members and present the same to Parliament.

The Committee then adjourned.



P. Chidambaram
Member of Parliament (RS)
Former Union Finance Minister

Subject: Dissent Note to the Report on 'India and International Law

DISSENT NOTE ON REPORT ON "INDIA AND INTERNATIONAL LAW...."

The Draft Report of the Committee on External Affairs was circulated to the Members on 04-08-2021 and the meeting of the Committee was called at 3 pm on 05-08-2021 to consider and adopt the draft Report.

We have considered the draft Report. Evidence was taken by the Committee in 2020. Since then there have been certain important developments that have a bearing on the subject dealt with in *Chapter 4: international Cyber Security*. We are of the view that the subsequent developments need to be taken into account and Chapter 4 of the draft Report suitably amended or amplified to reflect the views of the Committee on the said developments. Otherwise, it appears to us that the Report will be incomplete and a valuable opportunity would be missed to make suitable recommendations on a subject that has troubled Members of Parliament, the media and many sections of the people. Unfortunately, the Chairman was unwilling to entertain our plea and seek more information from the Ministries/Departments concerned or to allow the Members to propose additions to Chapter 4 of the draft Report. Hence, the need for this dissent note.

We may note that India has entered into MoUs with 13 countries and is negotiating renewals of MoUs with four countries. While the Ministries concerned have shared the names of the 13 countries (and the said names have been included in the Draft Report), the scope and ambit of the MoUs have not been fully disclosed. In particular, it is not clear whether each MoU governs only state-controlled agencies and entities of the two signatory countries or whether they also govern private sector providers of cyber-security tools/services in the two countries. There will be further questions on possible misuse of cyber-security tools and on which authority in the two signatory countries would have the duty and the jurisdiction to inquire into any misuse. Parliament has the right to seek and obtain answers to these questions. The Report will be incomplete without incorporating the views and recommendations of the Committee on these crucial aspects of *International Cyber Security*.

Pranab
J. K.
Barua



P. Chidambaram
Member of Parliament (RS)
Former Union Finance Minister

The pivot of Chapter 4 is the MoUs. Hence, it is imperative that the Committee should be apprised of the scope and ambit of the MoUs and the possible deficiencies in the MoUs. The Chairman has ruled that nothing can be added to the Draft Report at this stage. We respectfully disagree. We think such a ruling unnecessarily restricts the work of the Committee. Nothing would be lost if the draft Report is adopted a few days later. In our view, this draft Report, if adopted, would be an incomplete Report and somewhat outdated having been overtaken by subsequent developments.

While submitting a Report, Members of Parliament have a duty to elicit all the relevant facts up to the date of the Report and reach conclusions and make recommendations that would be beneficial to the governance of the country. We have been prevented from performing that duty and, therefore, we are submitting this Note of Dissent.

P Chidambaram (RS)

Jaya Bachchan (RS)

Preneet Kaur (LS)

Kalyan Banerjee (LS)

06.08.2021