

Australia's comments on UNODC proposals for the implementation of Operative Paragraph 3 of General Assembly Resolution 74/247

Australia would like to extend its sincere thanks to the United Nations Office on Drugs and Crime (UNODC) for its efforts to date to implement General Assembly Resolution 74/247 (which calls for the establishment of an Ad Hoc Committee). We note the April 2020 proposal entitled, "Implementation of Operative Paragraph (OP) 3 of General Assembly Resolution 74/247 and Next Steps" and its subsequent proposals. Australia would like to take the opportunity to provide our views on the proposed processes for implementation.

We are convinced that the process for a new cybercrime convention, for legitimacy, must be consensus-based, transparent, neutral and inclusive, particularly given the diversity of views among Member States. A transparent and inclusive process must also allow for multi-stakeholder participation, including business, NGOs and civil society. An approach premised on these principles is, in our view, the only way to facilitate genuine engagement and the negotiation of workable outcomes, consistent with - and building on - the existing international legal framework for cybercrime.

With this in mind, Australia would like to reinforce points already presented by a number of other countries. We stress the importance for a meeting such as the Ad Hoc Committee to adopt modified rules that explicitly favour consensus-based decision-making. We strongly support this mode of decision-making both at the Ad Hoc Committee, and indeed, throughout the entire negotiation process. We would urge the UNODC to consider highlighting the merits of this approach in its own background paper as well as outlining mechanisms and precedents to support consensus-based decision making.

Australia is also of the firm view that the Ad Hoc Committee meeting, currently slated for August 2020, should focus only on procedural matters. An 'outline of activities' would reasonably include a schedule for meetings and stakeholder engagement. It would be counter-productive, however, for discussions to attempt to address at this early stage the scope or content of a new treaty, even in a limited fashion. This is especially the case in the absence of an agreed procedural format, and opportunity to review fully the outcomes of the open-ended intergovernmental Expert Group and its comprehensive study on cybercrime. In short, we consider General Assembly Resolution 74/247 provides a clear mandate for the Ad Hoc Committee to determine matters of process at its August meeting, not matters of substance. Any discussions of substance should be deferred until after the Inter-Governmental Experts Group on Cybercrime (IEG) stock-taking meeting in 2021, to allow for full consideration of the IEG's important work and technical expertise and as per General Assembly Resolution 74/247 (OP2).

On inclusiveness, Australia notes that the COVID-19 environment will present significant challenges for many Member States' participation in the Ad Hoc Committee meeting should it proceed in August. We welcome the UNODC's efforts to clarify possible arrangements, including the potential for the meeting to occur virtually. Should this be a workable format, it may provide greater flexibility to engage in this important meeting.

Finally, Australia would like to reiterate its deep appreciation for the UNODC's role in this process, in the lead-up to the Ad Hoc Committee meeting and beyond. We welcome the efforts of the UNODC to prepare an agenda and supporting documentation that will support a transparent, neutral, inclusive and consensus-based process for the development of the proposed new cybercrime instrument.