

**Information note by the Chair of the Ad Hoc Committee
in preparation for the informal consultation with Member States
to be held on 12 December 2022**

The present note was prepared by the Chair of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, H.E. Ms. Faouzia Boumaiza Mebarki, to support Member States' preparation for the informal consultation to be convened on 12 December 2022. At the informal consultation, the Committee Chair will present the first Consolidated Negotiating Document (CND), which contains the three chapters to be examined at the fourth session of the Ad Hoc Committee, namely, general provisions, criminalization, and procedural measures and law enforcement. The advance version of the document in English was circulated via email and made available on the website of the Ad Hoc Committee on 15 November 2022, and the versions in all United Nations official languages are expected to be published on 7 December 2022.

The present note includes the information on the factors taken into account in preparation for the CND, an overview per chapter contained in the above-mentioned CND, and the methodology of the consideration of the CND at the Plenary of the fourth session.

As mentioned at the informal consultation held on 8 November 2022, the advance version of the second CND, containing the remaining chapters to be discussed at the fifth session, will be made available in English only before the fourth session for the reference of Member States. The translated version in all United Nations official languages will be published ahead of the fifth session.

Factors taken into account in the preparation for the CND

Striking a balance between the inclusion of all the views from Member States, some of which are diverse, and the level of clarification and certainty of a negotiating document that should be read as treaty text and was prepared at the current stage of the elaboration process, was the main challenge faced in the preparation of the CND. In preparing the document, the aim was to move past

the compilation of views from Member States submitted at the second and third sessions, and to prepare a document that would make visible the progress of the work of the Ad Hoc Committee and serve as a basis to facilitate further progress.

Thus, the CND was prepared as an inclusive document containing the main views of Member States on the basis of both the written submissions by Member States at previous sessions of the Ad Hoc Committee, as well as the discussions held during those sessions.

Owing to the nature of the document prepared for the current stage of the negotiation process, not all detailed views could be included. Indeed, some provisions or titles were reformulated to present a coherent and well-articulated document and to bridge views by combining and merging some proposals.

The CND was prepared strictly based on the mandates given to the AHC as contained in the relevant resolutions. OP 2 of GA resolution 74/247 and OP 11 of GA resolution 75/282 underline the necessity to take full consideration of existing international instruments and efforts at the national, regional and international levels on combating the use of information and communications technologies (ICTs) for criminal purposes. In preparing the CND, this was taken into account. For example, several proposals that were included in the CND considered provisions from UNCAC and UNTOC,¹ as well as regional instruments, including the African Union Convention on Cyber Security and Personal Data Protection ('Malabo Convention'), the Commonwealth of Independent States Agreement on Cooperation in the Fight Against Crimes in the Field of Information Technologies ('Dushanbe Agreement'), the Council of Europe Convention on Cybercrime ('Budapest Convention'), and the League of Arab Convention on Combatting Information Technology Offences, as well as recommendations of the Open-ended intergovernmental expert group to conduct a comprehensive study on cybercrime. This may also contribute to build on those instruments.

Moreover, with regard to the inclusion of provisions on which there are divergent views, a discussion is important on all the main views and interests of Member States, even the divergent ones, and every effort should be made to achieve consensus, in line with OP5 of GA resolution 75/282.

¹ Provisions adapted from UNCAC/UNTOC : Article 3 (3), Article 4, Article 33, Article 34, Article 35 (3,4,5), Article 36 (1,2,3), Article 37, Article 38, Article 39 (1,3,4,6,7,8,9), Article 40 (except for paragraph 2(e)), Article 50, Article 51, Article 52, Article 53, Article 54 and Article 55.

To effectively facilitate the elaboration process, in view of steps ahead as planned in the road map and mode of work, efforts were made to present a clean document and alternatives to proposed text were added in two cases only:

- **Firstly, on terminology.** Divergent views exist regarding the use of certain terms, such as ‘cybercrime’ or ‘ICTs for criminal purposes’ in the convention. As you may recall, Member States agreed that the issue of terminology should be addressed only after progress is made in the negotiation of the substantive provisions. Therefore, Member States are invited to avoid discussing the bracketed terms in the text in detail during the fourth session, as a focused and separate discussion on this specific subject of terminology will be conducted at a later stage.
- **The second case of alternatives in the text** is captured in articles 3 and 41 on the scope of the convention and the scope of procedural measures, respectively, when it comes specifically to the collection and sharing of electronic evidence. The alternatives are as follows:
 - **Option 1:** the collection and sharing of e-evidence only for the crimes set forth in the convention.
 - **Option 2:** the collection and sharing of e-evidence for any criminal offence.
 - **Option 3:** the collection and sharing of e-evidence for serious crimes (a concept that would likely require a definition).

At this stage, these options are simply brought to the attention of Member States as the choice appears to be linked to the discussions on the chapter on criminalization and on whether Member States decide to include a more exhaustive or more focused list of crimes.

Overview per chapter

This section contains a brief overview of the content of each chapter for reference.

Chapter 1 on general provisions

This chapter contains 5 articles: the statement of purpose, use of terms (which remains empty for now as we have to engage in a separate discussion on this

specific issue at a later stage), the scope of application, the protection of sovereignty with the same formulation as in articles 4 of UNCAC and UNTOC, and article 5 on the protection of human rights.

With regard to article 5 and the issue of the references to human rights in the three first chapters, article 5 has two paragraphs:

- Paragraph 1 contains a general reference to the necessity of respecting applicable international human right law.
- Paragraph 2 urges States Parties to, first, make efforts in mainstreaming a gender perspective, and second, take into consideration the needs of vulnerable groups. It is brought to the attention of Member States that “mainstreaming a gender perspective” is a terminology in usage in many United Nations documents, such as CCPCJ resolution 36/3 on “Mainstreaming a gender perspective into crime prevention and criminal justice policies and programs and into efforts to prevent and combat transnational organized crime”.

In addition to this general reference to human rights, other specific references were included in other parts of the document. A reference to the right to a fair trial and the rights of defense was included in the chapter on criminalization, under article 39 on prosecution, adjudication and sanctions. Under the chapter on procedural measures and law enforcement, there is also an article on conditions and safeguards (article 42), similar to article 15 of the Budapest Convention, with additional references to the principles of legality and necessity, alongside with the principle of proportionality, in addition to a reference to the protection of privacy and personal data.

Chapter 2 on criminalization

This chapter as it currently stands includes a wide list of criminal acts resulting from the efforts to reflect all the main proposals submitted by Member States. This chapter contains 33 articles grouped in 11 clusters:

- **Cluster 1** includes the 5 offences against the confidentiality, integrity and availability of systems and data or information. The formulation of these articles is very similar to the one of the Budapest and League of Arab

States conventions, with an additional reference to some aggravating circumstances, specifically when the offence involves or affects critical infrastructure.

- **Cluster 2** contains 4 computer or ICT-related offences, which are: forgery, fraud, theft, and illicit use of electronic payment instruments. The Budapest Convention, the League of Arab States Convention and the Dushanbe Agreement are the main sources of the articles of this cluster.
- **Cluster 3** contains two articles on identity and personal information related offences, stemming from a combination of some proposals submitted by Member States.
- **Cluster 4:** contains one article on infringement of copyrights.
- **Cluster 5** includes 4 articles on online child sexual abuse or exploitation (online child sexual abuse or exploitation materials, facilitation of child sexual abuse or exploitation materials, grooming and cyberstalking.)
- **Cluster 6** includes 2 articles on other harmful acts, that is, the involvement of minors in the commission of illegal acts and encouragement or coercion to suicide.
- **Cluster 7** includes two sexual abuse offences: one on sexual extortion and another on non-consensual dissemination of intimate images.
- **Cluster 8** contains 3 articles on offences mainly related to speech: incitement to subversion and armed activities, extremism related offences, justification of genocide and crimes against humanity.
- **Cluster 9** contains 4 articles on offences that are generally covered by other United Nations mechanisms and instruments, that is terrorism, drug trafficking, arms trafficking and trafficking in counterfeit medicines. Clusters 3 to 9 are based on proposals by some Member States.
- **Cluster 10** includes two articles on money-laundering and obstruction of justice, based on the language of UNCAC and UNTOC.

- **Cluster 11**, the last cluster, contains 5 remaining articles on ancillary liability, elements of an offence, penalties and sanctions, formulated mainly in a similar way as UNCAC and UNTOC, with some language from the Budapest Convention in the case of article 35 on the liability of legal persons.

Chapter on procedural measures

This chapter includes 16 articles, organized in three clusters:

- **Cluster 1:** contains 3 provisions on jurisdiction, scope of procedural measures and conditions and safeguards.
- **Cluster 2** includes 6 procedural measures as formulated in the Budapest Convention (expedited preservation of stored data; expedited preservation and disclosure of traffic data, production order, search and seizure, real-time collection of traffic data, interception of content data). In addition, there is an article on the admission of e-evidence.
- **Cluster 3** includes 6 additional articles on procedural measures, on topics such as freezing, seizure and confiscation of assets, establishment of a criminal record, protection of witnesses and victims, and compensation for damage suffered. The language for these provisions was adapted from UNTOC and UNCAC.

Methodology on the consideration of the CND at the Plenary of the fourth session

This section contains information on the methodology for the conduct of the discussions of the text at the Plenary of the fourth session, as contained in the document circulated to Member States and available at the Ad Hoc Committee's [website](#).

As specified in the above-mentioned document, given the nature and current stage of the text and in order to make the best use of the available time, the discussion of the CND will be conducted in two rounds.

During the first round the Ad Hoc Committee will quickly go through the CND, for no more than 3 days, to elicit the first comments from Member States on the text. The aim of this exercise is to allow the Chair to openly and rapidly identify

the topics that need facilitation. Therefore, Member States are strongly encouraged to avoid delivering general remarks.

Concretely, the first round of discussions is envisaged to be conducted as follows:

- After concluding the examination of agenda items 1 to 3 of the [annotated provisional agenda](#), the Chair will open the floor for the first round to hear the comments from Member States on each of the three chapters of the convention in the following order: criminalization, procedural measures and law enforcement, and general provisions.
- In this first round, the Chair will invite interested Member States to intervene **once** under each chapter to state their position on a cluster, or if needed a provision or paragraph, as well as to provide, if possible, the rationale behind such position in a succinct manner.
- At the end of the consideration of the first round for a specific chapter, the Chair will announce the topics to be discussed informally, including the relevant provisions and the name of the respective co-facilitators.
- The discussion of the provisions that enjoy broader support will continue in Plenary during the second round of discussion. During this round, the chapters will be revisited in the same order as in the first round, and Member States are expected to propose concrete and substantive amendments or drafting proposals.
- Since many of the articles contain agreed language from UNCAC and UNTOC, Member States are invited to amend these articles only if there is a need to adapt them to the context and the topic of our convention.
- The same could be said regarding the articles based on the regional instruments. Amendments should be introduced only where there is a need to improve or adapt the language of the concerned articles.
- All in all, at this stage of our process, Member States should focus on proposing substantive amendments that improve the text and bring the Ad Hoc Committee closer to a consensus.

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

To conclude, Member States are reminded that the informal consultation to be held on 12 December 2022 was convened to assist Member States to familiarize themselves with the CND and to prepare for the fourth session. It will not be dedicated to the discussion of the provisions of the document, which will be done at the upcoming formal session of the Ad Hoc Committee.
