



Statement by the International Chamber of Commerce to the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of ICTs for Criminal Purposes 4th Session

Draft Provisions on Criminalization

Thank you, Chair, for the opportunity to share some brief comments on behalf of the International Chamber of Commerce, the institutional representative of 45 million companies in over 100 countries.

I have three concrete points to share on the specific articles in the chapter on criminalization, two general comments that should apply throughout all articles, and would like to conclude on a procedural point.

On particular articles and clusters of the CND:

1. The Convention should **focus on serious crimes that are cyber-dependent, it should not treat traditional crimes as cybercrime** merely because a computer was involved in the planning or execution of the crime, and it **should not attempt to regulate content**. This will help streamline the processes and procedures related to transboundary enforcement, as well as raise the prospect of reaching consensus between states which, consequently, could increase the number of signatories to the convention. Examples of such *articles to be removed include those in clusters 6 and 7*.

We recommend **primarily focusing on cluster 1, articles 6 to 10**, and advise tightening the language therein to avoid any potential misinterpretation to apply to content-related issues. We highlight in particular the importance for the convention to address the intentional development, spread, and use of malicious computer code to attack government systems, critical infrastructures or ICT supply chains, as well as the distribution, sale or offering for sale of hardware, software or other criminal tools used to commit cybercrime.

The Convention should **include illegal activity that is cyber dependent, only if the offenses are of the scale, scope, or speed that they would not be feasible without ICTs**. In this respect, we agree with the numerous delegations that expressed support for the further consideration of articles in cluster 5 on child sexual abuse material. Therefore we believe that *clusters 2, 3 and 4 should be removed*.

2. The Convention **should not contain provisions on offences covered by other conventions**, simply because those offences leverage ICT, *such as those noted in clusters 8, 9 and 10* as

this would create unnecessary duplication that can lead to conflict of laws in implementation, confusion, or contradiction and risks losing focus on a targeted, practical, effective instrument to tackle cybercrime effectively.

3. As a default, the Convention **should not create liability for third parties**, but encourage and permit the production of timely mitigation measures in case of detection of vulnerabilities. Definitions of third party liability differ across jurisdictions and disturbing these arrangements through international obligations in one area is very likely to lead to unanticipated negative consequences in other areas. Therefore *article 35* should be deleted.

In particular, the Convention **should not seek to increase cyber resilience through the introduction of industry regulation**. Other means of regulating industry exist, and these should not be conflated with cybercrime policy through being included in this convention.

With respect to the **chapter on criminalization overall**, we would like to emphasize again our comments voiced previously that:

1. **Dual criminality must be the basis for defining crimes under the scope of the Convention.** Without this standard, certain conduct may not be understood to be the same or similar enough of a crime in all relevant jurisdictions, which is a necessary prerequisite for cooperation in this space.
2. When criminalizing offences, the Convention should **explicitly mention criminal intent for each act**. Failing to do so might allow other clearly lawful activities, such as security or research, to attract an unknown level of liability.

Finally, on a procedural note, we appreciate your clarification with respect to the organization of the informals and remain strongly optimistic that the **open and inclusive nature of our conversations thus far will continue to be maintained also at the informals**. We are looking forward to contributing global business perspectives to the work of the co-facilitators.

Thank you, Madam Chair.