

India Statement on Criminalisation Chapter on 9.1.2023

Madam Chair,

I take this opportunity to convey on behalf of my delegation New Year's greetings to you, your team in the Secretariat and delegates present in the hall and all those attending this session online.

Madam Chair,

We place on record our deep appreciation for the hard work done by the Secretariat under your leadership in compiling the Consolidated Negotiating Document (CND) for the first three chapters i.e. General Provisions, Criminalisation and Procedural measures and law enforcement and this CND document reflects broadly the submissions made by the member States and other stake holders during the previous sessions. The work done under your leadership and guidance is commendable. We welcome your initiatives and I assure you of my delegation's constructive engagement during the ongoing session.

Madam Chair,

Criminalisation Chapter is important chapter of this Convention and it has 34 Articles divided into 11 Clusters. The CND Document is a wonderful attempt to summarize the views expressed and submissions made in the 1st and 2nd Session.

India has consistently requested that the Criminalisation Chapter should cover crimes committed with the use of ICTs

with strong international cooperation to combat these crimes which are generally cross border in nature. For example, the world is experiencing crippling impact of crimes committed with the use of Ransomware that is affecting the individuals, companies, societies, critical infrastructure, etc. Such crimes must be included in the Convention or its language to cover it in its entirety.

Broadly, the Indian delegation would like to draw the attention on Articles [6](#), [11](#), [18](#), [20](#), [21](#), [25](#), 29 and 35 in this Chapter that that require more clarity. More detailed proposals on these articles and some other articles in this Chapter will be made during the 2nd Round.

Reference Cluster 1-Article 6 to 10

Illegal Access Article 6 (2). Use of ‘by infringing security measures’ does not add any specific value and hence may not be used. Also we propose that wherever the text in convention mentions data it should be replaced with digital and electronic data to bring more clarity and make it more comprehensive.

In Article 6 (3) (b): India proposes to add a word after obtaining ‘& / or unlawful transfer.’

In Article 6 (3) (c): India proposes to add ‘and / or infrastructure of national importance’ after critical infrastructure.

The rationale behind the proposed addition is that many countries are yet to define critical infrastructure in their country.

Article 11 (1) related to forgery, India seeks clarification on how 'inauthentic' will be defined. What will be the procedure of defining something inauthentic?

Article 12 (c) related to fraud, India proposes that to bring uniformity in usage of words, 'an entity' may be replaced with 'legal person'.

Article 12 (2) (c): India proposes wherever the word person has been used it should be replaced by 'person including legal person' unless the intention is to cover only 'natural person'.

Madam Chair,

India strongly supports the articles related to protection of abuse of children to be included in this Convention to protect them from use of ICTs for criminal purposes given in Cluster 5 – Article 18 to 21.

However, 'viewing' as proposed in Article 18 (1) (f) needs to be deliberated in detail as accidental viewing of CSAM should not be criminalised as it could lead to un-intended consequences. Inclusion of provision in Article 18 (2) (b) to criminalise 'a person appearing to be a child engaged in real or simulated sexually explicit conduct cannot be supported in the provision relating to child sexual abuse. The rationale is that the authority must prove that the person is actually a child.

Reference Article 20 (1), India proposes to delete criminalisation of 'a person believed to be a child or under 18 years of age' wherever it appears in the text.

In Article 21 (1): As cyber stalking is not limited to physical meeting or physical harm, India proposes to delete ‘in furtherance of an effort to arrange a meeting with the child’ and add ‘including causing harm / psychological harm’.

Cluster 7 – Article 24 to 25

To bring more clarity in the Article 25 pertaining to Non-Consensual dissemination of intimate images, it is proposed that in Article 25 (2) (b) and (c) - The use of terms ‘reasonable expectation of privacy and in Article 25 (3) - The use of terms ‘legitimate purpose’ needs to be defined.

Madam Chair,

Terrorism inflicts grave harm to societies and individuals. Terrorism knows no boundaries and has become trans-national in nature. The misuse of ICTs has increased in spread of acts of terrorism.

Reference Cluster 9 – Article 29 to 32 – Under Article 29, Terrorism related offences have been mentioned. India attaches high importance to the inclusion of the use of ICTs for terrorist purposes in this Convention. The delegation would like to draw the attention to India’s proposal on cyber terrorism in its written submission to UN AHC in 2nd Session which may also be referred.

Madam Chair,

In Cluster 11 – Article 35 to 39, under Article 35 (2) – India proposes that the text “for the benefit of that legal person by a natural person” does not add any value rather it limits the

application of this article to only the benefit and not to the loss and hence may be deleted. Also a clarification / elaboration on Article 35 (6) is sought.

Madam Chair,

These are Indian delegation's preliminary comments on the Criminalisation Chapter. India will provide further comments / views in the second round on this Chapter.

My delegation assures you Madam to extend its full support for fruitful discussions and negotiations as the session progresses.

Thanks.

(as delivered)

(With the request for publishing on UN AHC website)