



STATEMENT BY MALAYSIA

FOURTH SESSION OF THE AD HOC COMMITTEE TO ELABORATE A COMPREHENSIVE INTERNATIONAL CONVENTION ON COUNTERING THE USE OF INFORMATION AND COMMUNICATIONS TECHNOLOGIES FOR CRIMINAL PURPOSES VIENNA, 9-20 JANUARY 2023

AGENDA ITEM 4: PROVISIONS ON CRIMINALIZATION

Madam Chair,

Firstly, Malaysia wishes to thank you Madam Chair and the Secretariat for your tireless efforts in preparing the Consolidated Negotiating Document (CND) for our perusal and consideration.

2. Given the unprecedented and emerging cybercrime threats around the world, Malaysia believes that enhanced international cooperation to effectively prevent and combat cybercrimes is urgently needed. Thus, Malaysia welcomes the drafting of the CND and looks forward to deliberating further on the said draft.

Madam Chair,

3. As a general note, Malaysia would like to reiterate our view that this Convention should focus on criminalizing cyber-dependant crimes and criminalizing only certain cyber-enabled crimes. Malaysia acknowledges the structured approach you have outlined to guide our work in this session. In the interest of time, we would share specific views and comments pertaining to Chapter II of the CND on Criminalization.

4. First, Malaysia is agreeable with and support the inclusion of **Articles 6, 7, 8, 11, 12, 14, 16, 17, 18, 19, 20, 24, 25 and Articles 34 to 39** in the draft Convention, while reserving our rights to discuss further on the choice of specific language or terms which will be deliberated upon during the next sessions.

5. Next, Malaysia could consider demonstrating flexibility with the inclusion of **Articles 9, 10, 13, 15, 21, 22 and 33**, though they would require further deliberations, with our views as follows:

- a) On Article 9, Malaysia is generally agreeable with its inclusion. Nonetheless, we are not in favour of the insertion of the term “serious”, given that the phrase “serious hindering” is rather ambiguous and subjective. The term “serious” could increase the threshold for prosecution and pose difficulty to Member States in deliberating any given charge. As such, we suggest that this Article does not include the term “serious” and only criminalizes acts, which cause “unlawful hindering of the functioning of a computer system or ICT system/device”.
- b) On Articles 10, 13, 21 and 22, Malaysia would like to continue listening and learning from other Member States on the adequacy of their domestic laws, the implementation and the challenges faced in addressing all the criminal acts stated in these Articles.
- c) On Article 15, Malaysia is concerned with the proposed need to prove the “*intent of obtaining financial benefit*” as one of the elements of the offence. Firstly, the perpetrators who access, sell, provide or otherwise making available of any material containing personal information about a person, not only do so merely for financial benefit. Secondly, it would be difficult for law enforcement officers and prosecutors to prove the case if such specific intent is included. As such, Malaysia wishes to propose the term “*criminal intent*” be used instead, as it is more general and encompasses a wider range of offences.

- d) On Article 33, Malaysia would like to reiterate our opinion delivered during the 2nd Session of the AHC that there is no need to have a specific provision on money-laundering as it is already covered under Article 6 of UNTOC, which binds the Parties to apply to a wide range of predicate offences including cyber crime offences. Nonetheless, Malaysia could continue to consider the views and perspectives of other delegations on this article.

Madam Chair,

6. Lastly, Malaysia would clearly outline the articles that could not be accepted for inclusion in the draft convention, namely **Articles 23 and Article 26 to 32**, on the grounds that these Articles do not seem to share broad consensus while they have already been addressed through other existing international instruments.

7. In conclusion, Malaysia looks forward to engaging constructively in this process, which allows Member States to have meaningful participation. We certainly hope that it will lead us to a solid convention on preventing and combating cybercrimes.

Thank you, Madam Chair, for your attention and indulgence.