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English only

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

New York, 21 August–1 September 2023

**Chair's Report of the Fifth Intersessional Consultation of
the Ad Hoc Committee to Elaborate a Comprehensive
International Convention on Countering the Use of
Information and Communications Technologies for
Criminal Purposes****Note by the Secretariat**

1. The present text contains the report of the Fifth Intersessional Consultation of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes, held on 20 and 21 June 2023, which was prepared by the Ad Hoc Committee Chair, Faouzia Boumaiza Mebarki (Algeria), with the support of the Vice-Chair, Eric do Val Lacerda Sogocio (Brazil), who chaired the intersessional consultation, and the assistance of the secretariat.
2. The Fifth Intersessional Consultation of the Ad Hoc Committee was held in accordance with paragraph 10 of General Assembly resolution [75/282](#), in which the General Assembly encouraged the Chair of the Ad Hoc Committee to host intersessional consultations to solicit inputs from a diverse range of stakeholders on the elaboration of the draft convention, the modalities of the participation of multi-stakeholders in the Ad Hoc Committee, contained in Annex II of the report of the session on organizational matters (available [here](#)), as well as the road map and mode of work for the Ad Hoc Committee contained in Annex II of the report of the first session of the Ad Hoc Committee (available [here](#)).
3. The Fifth Intersessional Consultation was held in English over four meetings in Vienna and online (the agenda is available [here](#)). It was attended by representatives of 58 multi-stakeholders: 2 from United Nations bodies, specialized agencies, funds and functional commissions of the Economic and Social Council, 7 from intergovernmental organizations, 18 from non-governmental organizations in consultative status with the Economic and Social Council and 31 from other non-governmental organizations, civil society, academic institutions and the private sector. The consultation was also attended by 77 Member States and non-member observer States.



4. Under agenda item 2, the Chair held an interactive exchange of views on the items to be discussed by the Ad Hoc Committee at its sixth session, that is, the third reading of the draft text of the convention (document symbol A/AC.291/22), structured according to the guiding questions prepared by the Chair and organized in accordance with the chapters of the draft text of the convention.

5. Under agenda item 2(a), entitled “General provisions”, many speakers highlighted the engagement of multi-stakeholders in the process of the Ad Hoc Committee as a model of participation, which should serve as reference to similar processes of the United Nations, and commended the Chair as well as Member States for the role afforded to multi-stakeholders throughout the elaboration process to date. With regard to the use of terms, several speakers emphasized the importance of maintaining terminology that is as clear, narrow and precise as possible to avoid misinterpretation and overcriminalization, as well as the importance of technology-neutral terminology to help the future convention stand the test of time. Speakers also underscored the importance of ensuring a clear, well-defined and narrow scope of application of the convention and of limiting the scope of the collection of evidence in electronic form to offences established in accordance with the convention or to serious crimes only, while subjecting it to strong human rights safeguards. Moreover, while discussing the general provisions of the draft text of the convention, several speakers stressed the importance of robust human rights safeguards and the right for privacy. Moreover, the need to ensure the protection of security researchers and ethical hackers, whose purpose is to find vulnerabilities by testing systems, was also underscored. In relation to article 5 of the draft text of the convention on respect for human rights, referring to relevant international legal instruments was suggested. The inclusion of a reference to the protection of victims in the statement of purpose of the draft text of the convention was also recommended. Furthermore, the importance of adhering to the rule of law was also mentioned, as was the fact that the convention should ensure that secret law enforcement measures are the exception rather than the rule, provided that this did not compromise investigations.

6. In addition, several speakers used the opportunity to address the preamble of the draft text of the convention and provided concrete proposals, including using the expression “guided by” instead of “bearing in mind” when referring to the principles of the Charter of the United Nations in preambular paragraph 1, linking the list of offences in preambular paragraph 3 to the offences covered by the convention, and ensuring strong references to gender-mainstreaming and multi-stakeholder participation.

7. Under agenda item 2(b), entitled “Criminalization”, several speakers reiterated the need for a narrow scope of criminalization, clear and precise criminalization provisions and the importance of the principle of dual criminality. Many speakers stated that in general the convention should focus on serious cyber dependent offences and the most important cyber enabled offences, whose scale, speed and scope is greatly increased by information and communications technologies. In addition, various speakers cautioned against the requirement of “dishonest intent” for some of the offences in the draft text of the convention, given that in their view “dishonest” is not a term as widely used as “criminal” or “malicious” when referring to intent across different jurisdictions, which in turn could lead to difficulties in the implementation of the convention. With regard to article 17 of the draft text of the convention on offences relating to other international treaties, several speakers voiced concerns regarding its broad scope and reiterated the need to keep the scope of the convention narrow. Proposals were made to make this provision optional, to delete it, or to move it to a different chapter. Furthermore, with regard to the scope of article 13 on offences related to online child sexual abuse or child sexual exploitation material, several speakers cautioned against broadening the scope to encompass forms of abuse and exploitation that are not sexual in nature. Furthermore, when discussing how to consider images and videos created through the use of artificial intelligence, with regard to article 15 on the non-consensual dissemination of intimate images, several speakers recalled the importance of technology-neutral language.

8. Under agenda item 2(c), entitled “Procedural measures and law enforcement”, several speakers highlighted the key role that private sector entities play in supporting the fight against the use of information and communications technologies for criminal purposes by law enforcement agencies at the operational level because of their technical knowledge and practical expertise. With regard to the scope of procedural measures enshrined in article 23, a number of speakers cautioned against extending it to cover “[o]ther criminal offences committed by means of [a computer system] [an information and communications technology device]” and “[t]he collection of evidence in electronic form of any criminal offence”, given that in their view this scope should be limited to offences established in accordance with the future convention. In addition, one speaker called for limiting the mentioned scope to serious crimes that are punishable by a maximum deprivation of liberty of at least four years. It was further argued that such a narrow scope of procedural measures would also increase the confidence among Member States to share data, thus fostering international cooperation. With regard to the conditions and safeguards set out in article 24, several speakers stated that, in addition to the principle of proportionality, the provision should include the principles of legality and necessity as well as references to the right to an effective remedy against the powers granted by the convention to law enforcement agencies. Several speakers also expressed concern about specific procedural measures provided for in the convention, namely the expedited preservation of stored [computer data] [digital information], the real-time collection of traffic data and the interception of content data, due to their intrusive nature, which would therefore necessitate strong human rights safeguards. In addition, the different levels of protection of traffic and content data in articles 29 and 30 of the draft text of the convention were put into question, by allowing the real-time collection of traffic data for any criminal offence, while limiting the interception of content data to serious criminal offences. Rather, it was said that the procedural measures for real-time collection and interception of both types of data should only apply to serious offences.

9. Under agenda item 2(d), entitled “International cooperation”, many speakers reiterated the need for the convention to be narrow in scope and limited only to offences established in accordance with the convention, which they stated should equally apply to the different forms of international cooperation in particular article 35 on general principles of international cooperation and article 47 on law enforcement cooperation of the draft text of the convention. Several speakers voiced concern that a broad scope would increase the risk of conflicting domestic laws, according to which requests for the private sector done in one jurisdiction could go against the law of another relevant jurisdiction. The fundamental importance of the principle of dual criminality, transparency, the rule of law, human rights safeguards, the protection of personal data and the right to an effective remedy was equally highlighted. It was further stated that such guarantees would not only be necessary on their own accord but would benefit all by increasing the trust among States parties, which is vital for an effective and sustainable international cooperation. Many speakers stressed the importance of foreseeing that requested States parties could refuse extradition and mutual legal assistance if the request was made for the purpose of discriminating against a person based on that person’s characteristics. Furthermore, article 36 on protection of personal data was underscored by some speakers as a welcome addition to the draft text of the convention and a solid basis for Member States to further negotiate this important aspect of the future convention. In this context, many speakers noted that it would be premature for the convention to provide for means of collecting and exchanging evidence in electronic form for any criminal offence and that international cooperation in the field of serious crime and transnational organized crime should be based on relevant international instruments through, *inter alia*, their amendment if needed, rather than on the future convention. Moreover, when considering the close relation of the draft text of the convention with existing international treaties on criminal justice, a number of speakers urged Member States to carefully consider and review the draft text to ensure its compatibility with existing obligations under international law.

10. Under agenda item 2(e), entitled “Preventive measures”, many speakers emphasized the importance of preventive measures and awareness-raising, with the active involvement of multi-stakeholders, in preventing and combating cybercrime. While several speakers stated that the provisions on preventive measures in the future convention should focus on cyber dependent crimes rather than other aspects, such as cybersecurity or private sector regulation, others encouraged the inclusion of education and awareness-raising measures to increase the cyber-resilience of local communities, especially vulnerable groups. Moreover, some speakers cautioned against overburdening service providers with cybersecurity tasks. Some speakers commented on the streamlined nature of the chapter on preventive measures in the draft text of the convention stating that they would welcome the expansion of the chapter to include further elements. In addition, some speakers reiterated that a narrow scope of the convention would lead to widespread ratification, which in itself would constitute an effective preventive measure.

11. Under agenda item 2(f), entitled “Technical assistance”, several speakers stated that all efforts must be made to provide for a technology neutral provision of technical assistance on a voluntary basis and carried out on mutually agreed terms. Moreover, it was stated that the provisions on technical assistance should ensure that all measures are commercially and technically feasible, considering the agency of the recipients, as well as tailored to the needs of the entity in question.

12. Under agenda item 2(g), entitled “Mechanism of implementation”, several speakers urged Member States to ensure meaningful multi-stakeholder participation in the envisaged Conference of the States Parties and to take into consideration the lessons learned from other international treaties on crime, such as the United Nations Convention on Transnational Organized Crime and the United Nations Convention against Corruption, when developing the rules of procedure of the mentioned Conference of the States Parties. In addition, several speakers called for a culture of analysis and evaluation in the mechanism of implementation of the future convention, to effectively identify the actual needs of States Parties, and thus ensuring an impactful implementation of the convention. Lastly, the role of the United Nations Office on Drugs and Crime as the secretariat of the Conference of the Parties was welcomed by many speakers.

13. Under agenda item 2(h), entitled “Final provisions”, no statements were made.

14. Following the interactive exchange of views, under agenda item 3 entitled “Any other business”, the Chair opened the floor for questions and statements by multi-stakeholders, Member States and non-member observer States. After the inquiry by one speaker of the future stages of work of the Ad Hoc Committee, the Chair of the Fifth Intersessional Consultation stated that further details would be made available by the Chair of the Ad Hoc Committee as soon as feasible.

15. At its fourth meeting on 21 June 2023, the Fifth Intersessional Consultation of the Ad Hoc Committee was adjourned after all agenda items were considered.
