

Proposed Outline and Modalities for the Ad Hoc Committee on Cybercrime

We thank the United Nations Office on Drugs and Crime (UNODC) in its capacity as secretariat of the ad hoc committee (AHC) to elaborate a convention on cybercrime for its efforts to facilitate the first meeting of the AHC under difficult circumstances. We consider the proposed outline and modalities for the further activities of the AHC set forth in the background paper UNODC prepared (A/AC.291/2 of 15 June 2020) to provide a good basis to begin considering the outline and modalities of the AHC's work. Several additional elements described below will be essential to ensure that both the organizational session and further activities of the AHC are inclusive, transparent, expert-driven, consensus-based, and focused on cybercrime.

Timetable: *The first substantive meeting of the ad hoc committee should take place as early as practicable following the AHC organizational session, and no earlier than August 2021, bearing in mind the practical proposals in A/AC.291/2.*

In light of the unprecedented crisis caused by the COVID-19 pandemic and corresponding difficulties in convening UN and other multilateral discussions, this timeline should allow the AHC to take into account the full recommendations of the open-ended intergovernmental expert group on cybercrime (IEG), consistent with UN General Assembly (UNGA) resolution 74/247. In accordance with its current mandate and its workplan for the period 2018–2021, the IEG is expected to present its conclusions and recommendations to the United Nations Commission on Crime Prevention and Criminal Justice (CCPCJ) in Spring 2021. The first AHC meeting should only be held after the CCPCJ has a chance to review these conclusions and recommendations at its May 2021 session.

Consensus-based decision-making: *The ad hoc committee should agree to take decisions and consider the text of any new instrument by consensus.*

Given the transnational character of cybercrime, any new convention must reflect the consensus of all Member States in order to facilitate effective international cooperation in this area. The secretariat should outline in the background documentation for the organizational session of the AHC that the AHC can use the UNGA Rules of Procedure, in accordance with Rule 161, and amend them to establish AHC decision-making by consensus. Similarly, the AHC should base its decisions on relevant consensus-based precedents, including recent decisions of the CCPCJ and the UNGA, such as resolution 74/177.

Election of officers: *In accordance with Rule 103 of the UNGA Rules of Procedure and consistent with the operative proposal of the secretariat, the ad hoc committee should draw one chair, 13 vice-chairs, and one rapporteur from among the five regional groups in Vienna. Officers should be elected by acclamation.*

The composition of AHC officers should be balanced to ensure that the diverse views of Member States on cybercrime are fairly represented. In particular, agreement on an AHC chair is a prerequisite for a clean slate of candidates before the election of officers at the organizational

session. As many matters related to a new convention remain divisive, only a neutral chair has the possibility of attaining such consensus. A neutral chair will also be necessary to help facilitate wide-ranging consensus-based discussions in the medium to long term.

Scope: *The organizational session of the ad hoc committee should focus exclusively on an outline and modalities, i.e. procedural matters.*

Consistent with resolution 74/247 and A/AC.291/2, discussions on the substance of a new convention should take place only following the AHC organizational session and the cybercrime IEG's stocktaking exercise in 2021. The ad hoc committee should affirm at the organizational session the commitment to fully consider existing international instruments with a view to avoiding conflict with the legal obligations of parties to those instruments, both UN instruments and others.

Venue: *Future meetings of the ad hoc committee should take place in Vienna with the UN Office on Drugs and Crime (UNODC) continuing to serve as secretariat.*

Vienna is the home for issues related to crime prevention and criminal justice in the UN system, and UNODC is uniquely placed to promote effective action to strengthen international cooperation in crime prevention and criminal justice, including as secretariat of the cybercrime IEG, and to provide technical assistance to Member States in this regard through its Global Programme on Cybercrime. Vienna also hosts existing multilateral bodies that could perform treaty body functions to consider matters pertaining to the aims of an eventual convention, such as the CCPCJ. Further, the multilateral fora based in Vienna are guided by the "Spirit of Vienna" and the long history of taking decisions by consensus it embodies.

Multi-stakeholder participation: *The ad hoc committee should enable the broad participation of civil society, the private sector, and other external stakeholders.*

Given the multi-stakeholder nature of cyberspace, any new convention elaborated without taking into account the views of all stakeholders, including civil society and the private sector, would be incomplete. The background materials for the organizational session should also clarify that the AHC is open to all Member States. To that end, and in an effort to encourage the widest-possible participation of Member States, the secretariat should facilitate the participation in AHC meetings of those Member States without Permanent Missions in Vienna, in accordance with any applicable health and safety restrictions, including virtual participation, whether or not warranted by the COVID-19 situation. Moreover, the secretariat and Member States should take steps to facilitate the participation of experts, including law enforcement and other criminal justice practitioners, as part of their national delegations.