

Comment on “Implementation of Operative Paragraph 3 of General Assembly Resolution 74/247 and Next Steps”, Status: 20 April 2020

While the United States does not have strong objections to UNODC’s April 20, 2020, proposal on the organization for the August meeting, entitled, “Implementation of Operative Paragraph 3 of General Assembly Resolution 74/247 and Next Steps,” we would like to register several concerns and provide UNODC with the conditions that the United States will require in order to participate in August and beyond.

Our participation in August will depend upon a fair, transparent process, including neutral leadership and consensus-based decision-making, as well as a focus on modalities, as required by the UNGA resolution establishing the ad hoc committee.

It is important for any Vienna-based Bureau to reflect a broad and balanced range of viewpoints on cybercrime; focus on practical law enforcement and criminal justice matters; adopt and maintain fair and transparent decision-making procedures; and avoid politicizing this process.

The Secretariat should take a strong role in drafting balanced and objective background materials: We are concerned with the very tight timelines for drafting the documents envisioned in the proposal and would strongly urge the Secretariat to take a firm hand in the drafting of these documents, particularly given the limitations COVID-19 is placing on consultations within regional groups and between them.

Zero-draft resolution needed before August: We further note that the proposal is silent on whether UNODC envisions a zero draft resolution to be prepared in advance of the August meeting. The past has shown that a three-day meeting may not be enough to finish such a draft if we must start from scratch, particularly on issues as contentious as these. We would suggest that the Secretariat consider taking the pen on a first zero draft, limited to only process (e.g., modalities) and not substance.

UNCAC as a model: We understand that UNODC, in its earlier proposal, raised the UNCAC terms of reference (resolution 56/260) as a potential model for this process. While we see benefit to looking back to the UNCAC process in some respects, we do want to point out that there are significant differences and that we may be able to adopt best practices from other models, as well. We would request the Secretariat to provide additional potential models for this process. Our concerns on UNCAC include that the time horizon under the UNCAC process was longer and provided more opportunity for informal organizational meetings prior to negotiations on its terms of reference in August 2001 and that by referencing the UNCAC in this manner provides a framework for scope of content in a draft instrument. The UNCAC process was launched based on member state consensus, which is not the case here. The UNCAC terms of reference specifically highlight substantive topics to be included in a draft treaty. It is the strong position of the United States that the August modalities resolution should be limited only to organizational matters.

The scope of discussions and drafting of documents pre-August and during August must be limited to process: We would like to call attention to OP3 of UNGA 74/247 establishing the ad hoc committee, which limits the scope of the August meeting to procedural matters, or “modalities.” Though the August meeting may be a venue for debate over the mechanism for soliciting inputs from Member States, any discussion of draft text or elements of a new treaty must wait until after the Cybercrime IEG has concluded its work and made its recommendations. In this regard, we would like to call attention to OP2 of UNGA 74/247, which calls for ad hoc committee to take the recommendations of the cybercrime IEG into full consideration. This would be impossible prior to the completion of the IEG’s current workplan, which currently is foreseen to be in 2021.