

8 February 2024

English only

**Ad Hoc Committee to Elaborate a
Comprehensive International Convention
on Countering the Use of Information and
Communications Technologies for
Criminal Purposes**
Concluding session
New York, 29 January–9 February 2024

Chair’s proposal on articles 3, 5, 17, 24 and 35

Note by the Secretariat

The annex to the present document contains the recommendations of the Committee Chair, based on the consultations and deliberations during the open-ended informal meetings and plenary meetings of the concluding session on the scope of the provisions on criminalization and international cooperation, and human rights of the draft convention (arts. 3, 5, 17, 24 and 35).



Annex

Chair's proposal on articles 3, 5, 17, 24 and 35

Article 3. Scope of application

This Convention shall apply, except as otherwise stated herein, to:

(a) The prevention, investigation and prosecution of the criminal offences established in accordance with this Convention, including the freezing, seizure, confiscation and return of the proceeds from such offences;

(b) The collecting, obtaining, preserving and sharing of evidence in electronic form for the purpose of criminal investigations or proceedings, as provided for in articles 23 and 35 of this Convention.

Article 5. Respect for human rights

States Parties shall ensure that the implementation of their obligations under this Convention is consistent with their obligations under international human rights law.

Article 24. Conditions and safeguards

1. Each State Party shall ensure that the establishment, implementation and application of the powers and procedures provided for in this Chapter are subject to conditions and safeguards provided for under its domestic law, which shall provide for the protection of human rights, in accordance with its obligations under international human rights law, and which shall incorporate the principle of proportionality.

2. In accordance with and pursuant to the domestic law of each State Party, such conditions and safeguards shall, as appropriate in view of the nature of the procedure or powers concerned, include, inter alia, judicial or other independent review, the right to an effective remedy, grounds justifying application, and limitation of the scope and duration of such power or procedure.

3. To the extent that it is consistent with the public interest, in particular the proper administration of justice, each State Party shall consider the impact of the powers and procedures in this Chapter upon the rights, responsibilities and legitimate interests of third parties.

Article 35. General principles of international cooperation

1. States Parties shall cooperate with each other in accordance with the provisions of this Convention, as well as other applicable international instruments on international cooperation in criminal matters, and domestic laws, for the purpose of:

(a) The investigation, prosecution and judicial proceedings of the criminal offences established in accordance with this Convention, including the freezing, seizure, confiscation and return of the proceeds from such offences;

(b) The collecting, obtaining, preserving and sharing of evidence in electronic form of criminal offences established in accordance with this Convention;

(c) The collecting, obtaining, preserving and sharing of evidence in electronic form of any serious crime, including serious crimes established in accordance with other applicable United Nations conventions and protocols in force at the time of adoption of this Convention.

2. For the purpose of the collecting, obtaining, preserving and sharing of evidence in electronic form of offences provided for in paragraph 1, subparagraphs (b) and (c), of this article, the relevant paragraphs of article 40 and articles 41 to 46 of this Convention shall apply.

3. Measures of international cooperation are to be carried out in accordance with the domestic law of the requested State, which shall provide for conditions and safeguards as specified in relevant articles of this Convention.

4. In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties.

Article 40, paragraph 20 bis

20 bis. Nothing in this Convention shall be interpreted as imposing an obligation to afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, language, religion, nationality, ethnic origin or political opinions, or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

Article 59, paragraph 3

3. Nothing in this Convention shall be interpreted as permitting or facilitating unlawful restrictions on human rights and fundamental freedoms, in accordance with applicable international human rights conventions.

Article 60 bis [former article 17]

1. In giving effect to other applicable United Nations conventions and protocols to which they are a Party, States Parties shall ensure that criminal offences established in accordance with such conventions and protocols are also considered criminal offences under domestic law when committed through the use of an information and communications technology system.

2. Nothing in this article shall be interpreted as establishing offences under this Convention.

New paragraph in the draft resolution

5 bis. *Further decides* that the Ad Hoc Committee shall continue its work, mutatis mutandis, in accordance with General Assembly resolutions 74/247 of 27 December 2019 and 75/282 of 26 May 2021, to consider the elaboration of a draft protocol supplementary to the Convention. For that purpose, two sessions, of a duration of 10 working days each, with the first session taking place in the second half of 2025, and the second session taking place in 2026, in Vienna and New York respectively, should be conducted for the purpose of submitting its recommendations to the Conference of States Parties at its first session, for its consideration and further action, in accordance with the relevant articles of the Convention.

Possible explanatory notes by the Chair

Explanatory notes by the Chair on specific articles could be included in the report of the Committee approving the draft convention, as follows:

Regarding article 24:

“Paragraph 2 of article 24 requires judicial or other independent supervision, grounds justifying the application of the power or procedure and the limitation on the scope of the duration of the measure. This paragraph does not imply any international supervision. Supervision is exercised as provided for by domestic law and any other binding international instrument to which a Member State is a party.”

Regarding “investigation” in articles 23 and 35:

“Criminal investigations may include situations where there are reasonable grounds to believe, on the basis of factual circumstances, that a crime has been committed. Criminal investigations may also be commenced where that investigation leads to stopping or impeding subsequent crimes from being committed. For example, in cases of investigations into a criminal organization or in cases where a person has threatened to commit an offence and that threat is considered, under domestic law, to be an offence in itself.”
