

Proposal by Canada on behalf of a group of 66 States and the European Union to the Ad Hoc Committee on Cybercrime (AHC) to further define the scope of the draft Convention

The following proposal for a new Article 3.3 of the draft Cybercrime Convention is made by Canada on behalf of Albania, Andorra, Angola, Armenia, Australia, Benin, Bosnia and Herzegovina, Cabo Verde, Central African Republic, Chile, Costa Rica, the Dominican Republic, Ecuador, the European Union and its 27 Member States, Georgia, Guatemala, Iceland, Israel, Japan, Kiribati, Liechtenstein, Malawi, Moldova, Monaco, Montenegro, New Zealand, Norway, Panama, Paraguay, Peru, the Philippines, San Marino, South Korea, the United Kingdom, the United States, Uruguay, Switzerland and Vanuatu:

Nothing in this Convention shall be interpreted as permitting or facilitating repression of expression, conscience, opinion, belief, peaceful assembly or association; or permitting or facilitating discrimination or persecution based on individual characteristics.

Rationale:

The proposed Article 3.3 is intended to bring further clarity to the scope of the Convention and ensure that this UN instrument is interpreted and applied in a manner consistent with our broader obligations and responsibilities as UN Member States.

The proposal stipulates that a narrow category of conduct is excluded from the Convention. The exclusion of this conduct from the treaty will create common ground, foster trust and efficiency in international cooperation, while ensuring that the Convention is consistent with the obligations and responsibilities of Member States under the UN Charter and other universal instruments.

The proposal is not a human rights provision and does not dictate what states can or cannot do under their domestic criminal law. The proposal also does not rationalize further expansion of the scope nor replace the need for strong safeguards throughout the text to ensure that permissible actions taken by states under the treaty are subject to appropriate limits and respect human rights, privacy and due process.

Context and Explanation:

The proposal was initially made by Canada in the final informal discussions on scope (group 4), during the sixth session of the AHC in August 2023 where it received support from 37 Member States and the European Union. Due to the lack of time to discuss the proposal fully, it was not included in the report by the co-chairs back to the closing plenary session, but was included in the [working document](#) of the group 4 scope informals. During the closing plenary, Canada indicated that it would continue to work with other interested states to ensure that the proposal was adequately considered in the lead up to the seventh negotiating session of the AHC in January/February 2024.

Over the past several negotiating sessions, the scope of the draft Convention and its constituent components has expanded significantly beyond a clearly defined list of core cyber-dependent offences and a few consensus-based cyber-enabled offences. The current draft text encompasses broad and uncertain swaths of conduct outside of the core offences listed in Articles 6-16. In addition, there is a continuous push by some to further expand the list of Convention offences, introduce broad catch-all provisions, and generally increase ambiguity as to the scope and application of the treaty.

As an example, the current Article 35 on international cooperation obligates State Parties to cooperate on Convention offences, as well as “serious crime.” This term is likely to be defined as an offence punishable by a certain number of years of imprisonment in a state’s domestic criminal law (three or four years are the current proposals). This could effectively obligate and/or enable international cooperation and mutual legal assistance, under the auspices of the Convention, for any conduct punishable by three or four years imprisonment under domestic law when a computer system/ICT device is involved, a scope of conduct subject to the whims of what a government may legislate as a ‘serious crime’ at any time. This is a concerning potential outcome and we can find no other UN criminal law treaty with such broad and ambiguous parameters.

We thank all States in advance for their consideration of this proposal. We will continue to advocate for its inclusion in the Convention and we hope to count on the strong support of the AHC membership in this regard. **For further information, discussion, and/or to join this proposal, please contact Kevin Mead at Kevin.Mead@international.gc.ca and Normand Wong at Normand.Wong@justice.gc.ca.**