

Proposal by Mexico to the Ad Hoc Committee on Cybercrime (AHC) to increase the ratifications threshold before entry into force to 60 States

Mexico proposes a change to Article 64.1 and 64.2 of the current draft, which is aimed at elevating the threshold before entry into force of the Convention from 40 to 60 ratifications.

Article 64. Entry into force

- 1. This Convention shall enter into force on the ninetieth day after the date of deposit of the ~~fortieth~~ ~~sixtieth~~ instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of that organization.*
- 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the ~~fortieth~~ ~~sixtieth~~ instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date on which this Convention enters into force pursuant to paragraph 1 of this article, whichever is later.*

Rationale:

At the heart of this Convention is the need to have a global instrument that captures the diversity and wide array of views of the UN Membership, united by the common goal of facilitating international cooperation and information exchange to prevent and combat cybercrime. To this end, rushing the entry into force of the Convention with only 20% of the Membership is detrimental and counterproductive to its very purpose. This proposal is a response to prevent such disjunction, setting the ground for an instrument that enters into force with great strength, backed by the ample support and commitment of States.

Harmonizing our legal systems with the content of the Convention is a complex task that cannot be underestimated. Its ratification involves the normative adaptation of a multitude of laws and regulations that cannot be addressed overnight. These processes require interdisciplinary work and coordination among the different levels of government, careful analysis, and therefore, time. Of particular concern is the possibility of a first Conference of State Parties held with a reduced number of countries, delegating key decisions on the future of the Convention to the criteria of a few and not contemplating the views of those that continue in the path to ratification.

Considering that decisions at the COSP require two thirds majority to go through, then 26 countries, or 13% of the membership would be deciding the way forward for the Convention. The concern is amplified when considering that, if adequate time is not provided to properly adjust national legal frameworks, some States might be unprepared to meet their commitments and respond to collaboration requests. How, then, would we be living up to the promise of creating an instrument that is truly global in nature and enables robust international cooperation to combat cybercrime? We must lay the appropriate foundations for this to happen. Moreover, if we are to leave the door open for protocol discussion, the widespread participation of the membership at the COSP becomes even more vital.

As a counterargument to this notion, some delegations have referred to the ratification threshold of UNTOC and UNCAC as the sole parameter. However, we believe that instruments signed more than 20 years ago should not bind the membership to a fixed number of ratifications applicable to every treaty signed subsequently. In fact, recent treaties such as the BBNJ Agreement reflect the evolution of this understanding, where a number close to 30% of the membership is considered a better indicator of universality and extensive commitment. The other emphasizes the urgency of prompt action against cybercrime and its rapidly evolving nature, but it does not contemplate the aforementioned challenges that could hinder the effectiveness of the Treaty. This proposal would not delay the entry into force of the Convention, but it would accelerate its universalization. Creating an environment that is more realistic and sensitive to the needs of States could act as a reflection of a solid and effective instrument, incentivizing States to accelerate their internal ratification processes.

We are confident that a majority of States share these sentiments and thank them for considering this proposal. We will continue to seek the formation of a truly universal instrument that facilitates the combat against cybercrime from its outset. In this respect, we hope to count on the support of the AHC membership for this proposal and are happy to further discuss it.

Please contact any of the following delegates for questions or further discussion about the proposal:

Azucena Sahagún: asahaguns@sre.gob.mx

Mauricio Reza Bautista: mreza@sre.gob.mx

Ander Laresgoiti: 3conu3@sre.gob.mx

Sergio Delgado Fernández: 6conu1@sre.gob.mx