

Comments made by the head of the Russian delegation on item 4 of the agenda of the first substantive session of the UN Ad Hoc Committee to elaborate a comprehensive universal convention on combating the use of ICTs for criminal purposes (“Objectives and Scope of the Convention”)

(New York, 2 March 2022 г.)

First of all, I would like to state that Russia supports the proposals of the Chair of the Ad Hoc Committee on the methodology of work on item 4 of the agenda. I would also like to express my gratitude to Madam Chair for the prepared document on the objectives, scope and structure of the convention, which can serve as a good basis for our further work.

The Russian Federation believes that the following goals should be included in the future convention:

First, establishing accountability for unlawful acts committed using ICTs, as well as promoting, facilitating the adoption and strengthening of measures aimed at effectively preventing and combating the use of ICTs for criminal and other illegal purposes, while protecting users of ICTs, ensuring compliance with obligations in human rights, respect for the principle of sovereign equality and territorial integrity of states and non-interference in the domestic affairs of other states.

Secondly, providing sufficient powers to effectively combat the use of ICTs for criminal and other illegal purposes, as well as providing practical tools for enhancing technical assistance among Member States and building the capacity of national authorities in the field of combating the use of ICTs for criminal purposes while encouraging the exchange of information, experience and best practices.

Thirdly, encouraging, stimulating and supporting international cooperation in preventing and combating the use of ICT for criminal purposes.

Dear colleagues, the scope of the future convention is one of the key issues of the first substantive session of the Ad Hoc Committee to elaborate a comprehensive universal convention on combating the use of information and communications technologies for criminal purposes. It was not by chance that I pronounced the full name of the Ad Hoc Committee fixed in UN General Assembly resolutions 74/247 and 75/282.

Intensive discussions during the intersessional period allowed us to discuss many important elements of the work of the Ad Hoc Committee and even agree on

some of them in advance. On the issue of the scope, we have already got differences. The approaches can traditionally be divided into two.

1. The first one is that the future convention should cover only so-called “cybercrime”, which, at the suggestion of a number of countries, will limit the coverage of the convention to crimes committed using computers, as well as to a small number of other crimes that exist thanks to the advent of computers. In English, this sounds like "computer-dependent and computer-enabled crimes."

This approach is inconsistent with the provisions of UNGA resolutions 74/247 and 75/282. Russia and a number of states draw attention to the fact that our future convention is not dedicated to cybercrime and purely computer crimes, but to a broader definition - the use of ICTs for criminal purposes. We have a clear understanding that ICTs goes beyond computers and covers a whole range of technologies.

The so-called "cyber" does not cover satellite, telephone, radio communications, or fax disruption. For some remote territories and islands, the only way to communicate is not computer networks and cables, but satellites, through which, among other things, communication with the Internet is provided. In developing countries, simple phones are also widely used, including those that are not connected to the Internet and do not have smartphone-like operating systems. All this is used by criminals for their own purposes and cannot be ignored.

Moreover, this phenomenon is typical not only for developing countries. I would like to refer to the Europol report “IOCTA-2021” of November last year, which, in addition to indicating an increase in purely computer crimes, recalls the dramatic increase in the number of cases of SMS phishing. SMS phishing is about phones, not computers. Therefore, it is not "cyber" but ICTs.

It is also worth noting the national contributions of a number of states in the Ad Hoc Committee, which note the increasing interaction between hackers and terrorists and the need to combat the use of ICT for terrorist purposes. A simple example. There are widely known cases when the activation of explosive devices occurred through a simple outdated phone that does not have an operating system, a chip inside, nor even an Internet connection. This direction also applies to the use of ICT for criminal purposes and can be taken into account when developing a future convention.

Therefore, in the existing specialized conventions, which are sharpened by “cybercrime”, there are no more than 10 offenses and their number is not growing despite the announced updates, and about 30 such offenses have already been proposed in the substantive contributions of states in the Ad Hoc Committee.

2. The future convention should be comprehensive in accordance with UNGA resolutions 74/247 and 75/282. That is, it should, as far as possible, cover all elements of criminal acts committed with the use of ICT.

In this regard, it is completely unproductive and premature to limit the scope of the convention. If we do this now, and while working on the text, for example, when defining criminalization, we realize that we will need to expand it to take into account new types of crimes, the convention will not be comprehensive, and therefore effective.

3. The experience of developing anti-crime conventions demonstrates that the issue of scope was often finally agreed upon by delegations only at the final stages of negotiations. It was the case with a number of UN conventions, and with the second additional protocol to the Budapest Convention. We also do not rule out that when discussing criminalization, definitions and other related topics, we will have to return to the issue of scope.

4. Therefore, it is important to leave the most optimal terminology for the topic of scope already agreed within the framework of UNGA resolutions 74/247 and consensus 75/282 – the use of ICT for criminal purposes. It does not limit us in creating a truly comprehensive convention and sets the stage for the future to take into account emerging threats. Such an approach, in our opinion, will ensure the necessary and well-balanced dynamics of the entire negotiation process so that in 2024 we have every opportunity to agree on and approve the draft convention, as laid down by UN General Assembly resolution 75/282.

Dear colleagues, a number of delegations, referring to the UN General Assembly resolution 74/247, cited an example of such a document as the Council of Europe Convention on Combating Computer Crime. I would like to draw the attention of esteemed colleagues to the fact that this is far from the only existing regional document. In accordance with operational paragraph 2 of resolution 74/247, the work of the Ad Hoc Committee must take into full account of existing regional instruments. In this regard, I would like to recall the existence of at least two more international legal instruments: the League of Arab States Convention on Combating Information Technology Offences (2010) and the Agreement on Cooperation between the States Parties to the Commonwealth of Independent States in Combating Crimes in the field of information technology (2018), this is the most recent agreement of all regional documents. I am sure that the mention of these conventions will be duly recorded. A number of delegations also spoke in favor of the future convention being consistent with existing instruments. Existing documents were adopted 10-20 years ago. The virtual sphere in which information crime operates is extremely dynamic. At this stage, it cannot be ruled out that the Ad Hoc Committee will identify and decide on the inclusion of additional international legal opportunities for combating information crime.

And the last point. Some delegations voiced the need to define a technologically neutral approach and definitions in a universal convention. In Russia's view, this approach requires further elaboration. During informal consultations, there have already been proposals for technologically neutral definitions. I asked my colleagues to give an example of such definitions. Unfortunately, I didn't receive an answer. This issue requires further elaboration, since the legal nature of technologically neutral definitions can hardly be clearly defined, and we need to avoid a situation where the absence of such a clear definition of the legal nature will become an obstacle to practical interaction between law enforcement agencies in our countries.