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English only

**Ad Hoc Committee to Elaborate a
Comprehensive International Convention
on Countering the Use of Information and
Communications Technologies for
Criminal Purposes**

Second session

Vienna, 30 May–10 June 2022

**Chair's Report of the First Intersessional Consultation of
the Ad Hoc Committee to Elaborate a Comprehensive
International Convention on Countering the Use of
Information and Communications Technologies for
Criminal Purposes**

Note by the Secretariat

1. The present text was prepared by the Chair of the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes. It contains the Chair's report of the First Intersessional Consultation, held on 24 and 25 March 2022.
2. The First Intersessional Consultation of the Ad Hoc Committee was held in accordance with paragraph 10 of General Assembly resolution [75/282](#), in which the General Assembly encouraged the Chair of the Ad Hoc Committee to host intersessional consultations to solicit inputs from a diverse range of stakeholders on the elaboration of the draft convention, the Modalities of the participation of multi-stakeholders in the Ad Hoc Committee, contained in Annex II of the report of the session on organizational matters held on 24 February 2022 (available [here](#)), as well as the Road map and mode of work for the Ad Hoc Committee (available [here](#)) contained in Annex XX of the report of the first session of the Ad Hoc Committee (available [here](#)), held from 28 February to 11 March 2022.
3. The First Intersessional Consultation was held in English over three meetings in Vienna and online (the meeting agenda is available [here](#)). It was attended by representatives of 85 multi-stakeholders, one from United Nations bodies, specialized agencies, funds and functional commissions of the Economic and Social Council, three from intergovernmental organizations, 30 from non-governmental organizations in consultative status with the Economic and Social Council and 51 from other non-governmental organizations, civil society, academic institutions and the private sector. The consultation was also attended by 82 Member States and two non-member observer States.



4. The intersessional consultation was chaired by Faouzia Boumaiza Mebarki (Algeria), Chair of the Ad Hoc Committee, and Eric Do Val Lacerda Sogocio (Brazil), Vice-Chair of the Ad Hoc Committee.
5. A panel was held under agenda item 2, entitled “Criminalization”, with presentations by Paula Gutierrez, Law & Policy Lead on Civic Space and Technology Issues at Article 19, Raman Jit Singh Chima, Senior International Counsel and Asia Pacific Policy Director at Access Now, and Andrea Romaoli Garcia, Chair of the Foundation for International Blockchain and Real Estate Expertise (FIBREE).
6. The panellists addressed a variety of issues on criminalization for the consideration of the Ad Hoc Committee. All panellists highlighted the importance of a narrow definition of the acts to be criminalized, focusing on core offences conducted through the use of information and communications technologies/cybercrime.¹ While focus was placed on so-called cyber-dependent crimes, the inclusion of so-called cyber-enabled crimes was also mentioned, but a cautious approach was advised. In that context, when considering cyber-enabled crimes, a panellist pointed out that provisions on procedural measures and law enforcement could, potentially, also apply to crimes not defined within the future convention, when committed through information and communications technologies. All panellists also underlined the importance of achieving a balance between the protection of human rights and the criminalization of specific conduct in the future convention. In this regard, speakers stressed that the convention should be in line with existing international and regional human rights instruments. Emphasis was placed by two panellists on the right to freedom of expression, which should not be unduly restricted. Furthermore, reference was made to criminal provisions, found in national laws, on hate speech, cyber-bullying, terrorism, or extremism having the tendency of being excessively broad in their definition, with negative impact on the protection of human rights. In addition, it was emphasized that secure communications, which are, inter alia, enabled using encryption, must not be weakened as a result of measures foreseen in the new convention. Moreover, one panellist mentioned the importance of considering the needs of women and children when negotiating the new treaty.
7. Following the presentations, the Chair of the Ad Hoc Committee opened the floor for questions and statements by multi-stakeholders, Member States and non-member observer States. The issue of achieving a proper balance between guaranteeing human rights protections while having the tools to effectively counter the use of information and communications technologies for criminal purposes/cybercrime and protect the rights of the victims of such crimes was mentioned by many speakers. In this regard some speakers highlighted that some rights and freedoms, such as freedom of expression, carries with it special duties and responsibilities, and may be subject to certain restrictions, including the protection of national security or public order. Moreover, the importance of including clear and precise definitions was underlined, and questions were raised as to limits to the possible inclusion of certain so-called cyber-enabled crimes within the convention, including but not limited to terrorism, hate speech and the infringement of public morals. Moreover, many speakers stressed the importance of considering existing relevant international instruments that may be applicable to countering the use of information and communications technologies for criminal purposes/cybercrime when elaborating the new convention. In this regard, some speakers inquired on possible gaps in relevant existing international instruments that could be filled, while highlighting the need to avoid conflicting international obligations or duplication of efforts. The importance of an effective implementation of the future convention was also highlighted.
8. The discussion under agenda item 3, entitled “General Provisions”, was preceded by a panel with presentations by Juan Carlos Sainz-Borgo, Dean at the

¹ The Chair has decided to use both terms “use of information and communications technologies” and “cybercrime” in her report, pending further discussion and a final decision by the Ad Hoc Committee on the use of terms.

University for Peace and Pavan Duggal, Conference Director at the International Conference on Cyberlaw, Cybercrime and Cybersecurity.

9. The first panellist described the importance and usefulness of considering existing international instruments and non-binding recommendations and guidelines on data protection in the process of elaboration of the new convention. The second panellist presented on the overall content of the convention, including a broad list of offences to be criminalized to reduce impunity, emphasizing that terms needed to be well-defined and not used interchangeably. In addition, given the transnational nature of cybercrime, a specific provision on the establishment of jurisdiction was fundamental. Furthermore, the difficulty of attributing cyber operations to a specific criminal actor was highlighted. Both panellists stressed the central importance of public-private partnerships and the need for using language that would enable the convention to remain relevant and applicable to future developments in information and communications technologies.

10. Following the presentations, the Chair of the Ad Hoc Committee opened the floor for questions and statements on agenda item 3. Some speakers agreed with the panellists that the convention should be drafted in a manner that anticipates future technological developments. In this regard, some speakers inquired on how best to balance this approach with the necessity to include only narrowly defined offences in the convention. The need for robust human rights protections throughout the convention was reiterated by several speakers. In addition, a review mechanism for the implementation of the future convention was mentioned as a platform to exchange information and best practices, keep parties abreast of technological advancements and enable targeted technical assistance. In addition, the relevance of maintaining a gender-sensitive approach regarding measures to prevent and combat, or counter, the use of information and communications technologies for criminal purposes/cybercrime throughout the convention was mentioned.

11. A panel was held under agenda item 4, entitled “Procedural measures and law enforcement”, with presentations by Craig Jones, Director of the Cybercrime Directorate at International Criminal Police Organization (INTERPOL), Farhan Sahito, Director General of Privanova, Kaja Ciglic, Senior Director of Digital Diplomacy at Microsoft and Ioana Sandescu Bauer, President of eLiberare.

12. The first panellist pointed out that, when negotiating the new convention, Member States should consider that threat-assessments on the use of information and communications technologies for criminal purposes/cybercrime vary greatly across different regions. He further noted that, particularly in the private sector, criminal activity through the use of information and communications technologies/cybercrime remained largely under-reported, which poses a challenge to investigation by law enforcement. The second panellist underscored the challenge posed to law enforcement by emerging technologies that create new opportunities for crime, which further demonstrates the need to streamline mutual legal assistance proceedings to expedite the sharing of criminal evidence. In addition, the vast economic impact of cybercrime was mentioned. The third panellist elaborated on specific elements that should be considered by the convention from the perspective of the private sector, such as a provision on the preservation of data with a specific time limit, such as foreseen in the Budapest Convention. The last panellist focused on how the use of information and communications technologies facilitated human trafficking and online sexual exploitation of children and vulnerable adults and pointed out that existing instruments do not sufficiently address this matter. All panellists underscored the importance of public-private partnerships, in particular with regard to the exchange of data, with one panellist underlining the opportunity presented by the negotiation of the new convention to develop or further strengthen the collaboration between the two spheres. In this regard, some speakers mentioned the need for a strong regulatory framework for data access requests to the private sector. In particular, a panellist noted that the convention should avoid enabling States to request collection of data in bulk. One panellist mentioned that, regardless of the transborder nature of the use of information and communications technologies for

criminal purposes/cybercrime, such criminal activity remained subject to national jurisdictions, while another panellist noted that provisions on jurisdiction should not be overly broad.

13. Following the presentation, the Vice-Chair of the Ad Hoc Committee opened the floor for questions and statements from multi-stakeholders, Member States and non-member observer States. Faced with a query from some speakers on the feasibility of the new convention regulating the role of the private sector in the fight against cybercrime, a representative from the private sector stated that the convention should focus on the role of public authorities, and that other means existed on cooperation with the private sector. From a different perspective, another speaker underscored the need for a legal basis for the exchange of data between the private sector and law enforcement agencies. In addition, some speakers stated that existing mutual legal assistance agreements are not properly equipped to efficiently tackle the use of information and communications technologies for criminal purposes/cybercrime and that the evidence required by law enforcement could often not be secured in a timely manner. Responding to a question on the project to develop a tool for the secure electronic transmission of mutual legal assistance (e-MLA), a panellist explained that the operationalisation of this tool is conditional on the availability of financial resources. Furthermore, the need for the harmonization of existing cybercrime laws at the national level, as well as the potential role of the convention in this matter, was mentioned. Throughout the discussion, the importance of human rights protection was underlined, especially in respect of provisions on procedural measures and law enforcement.

14. Overall, there was agreement that the consultation process with multi-stakeholder organizations was important to ensure the effective work of the Ad Hoc Committee and that their active and informative participation was welcomed.

15. At its third meeting on 25 March 2022, the First Intersessional Consultation of the Ad Hoc Committee was adjourned after all agenda items were considered.
