



PHILIPPINES

PH Interventions during the 2nd Session of the AHC-Cybercrime

30 May-10 June 2022, Vienna, Austria

GENERAL PROVISIONS

Madam Chair,

The Philippine Delegation submits the following positions for the General provision:

1. This Delegation is of the opinion that one of the most effective ways within which we can best ensure a fit for purpose convention is by conducting sessions that are inclusive and all-encompassing in nature. By doing so, we are not only hearing representatives from the criminal justice authorities of the member states, but also from the academe, private entities, and other organization.

Their participation guarantees that the crafters of the UN treaty under consideration will be apprised of the current threats and trends on the diverse range of technological means used to perpetrate the offenses to be established. This, in turn, will allow the crafters to draft the provisions using technologically neutral words, while ensuring that the same will encompass past, present, and future threats and trends.

Further, this Delegation suggests that a Technical Working Groups may be established and conduct regular activities to publish non-partisan consensus commentaries, primarily in the form of principles, guidelines, and best practices, that are all designed to offer practical solutions to "bleeding-edge" technology and legal issues. As these commentaries are recognized, cited, and followed, they move the convention forward in a reasoned and just way.

2. Consistent with our previous intervention and the interventions of many delegations, we submit that it is important to utilize technologically neutral words in the actual crafting of the provisions of the UN treaty under consideration. Having the provisions written in technologically neutral words allows the treaty to be adaptable to future technological advancements, so as to encompass future schemes without the need to amend it.

3. We are of the opinion that a chapter on general provisions would be helpful especially in guiding the member states in the interpretation and implementation of the UN treaty under consideration. This chapter should provide a briefer on what purpose will a treaty will serve, as well as its scope. Equally important is the definition of terms so that member states will arrive at a common and harmonized understanding on the terminologies that are to be used in the said instrument.

This Delegation submits that it would be more responsive for the convention to focus on the overarching ideas of cybercrime prevention, cybercrime itself, and international cooperation and technical assistance.

4. Consistent with the Statement of Purpose of the UN Convention Against Transnational Organized Crime, we propose the inclusion in the Statement of Purpose the elements – criminalization of acts, procedural measures with due regard to human rights, and mechanisms for international cooperation and technical assistance. These elements stated in one provision will give member states an overview as to the purpose of the UN treaty under consideration and how to realize the same.

5. We find no harm in coming out with a Statement of Purpose that has reference to the protection of human rights, as many delegations have already articulated that such concept must be one of the key elements of the UN treaty under consideration.

6. We submit that the procedural measures/articles relating to electronic evidence should not be limited to the offenses to be established in the convention. This is one of the ways on how we can limit the application of the UN treaty under consideration to only cyber-dependent crimes, on which member states can reach consensus. By allowing the

procedural measures/articles relating to electronic evidence to be applicable to other offenses covered by other international instruments, member states will not be compelled to propose the inclusion of cyber-enabled crimes in the UN treaty under consideration, which may result in it being overbroad.

7. This Delegation is of the opinion that there is no need to include a clause in the Scope of Application on freezing, seizure, confiscation and return of the proceeds of the offenses established by the convention, as these should already be covered by and are necessary consequences of the concepts “investigation” and “prosecution”.

8. We find the language in Article 4 of the UN Convention Against Transnational Organized Crime and UN Convention Against Corruption sufficient with regard to the protection of sovereignty. Although cybercrimes are transborder in nature and addressing it necessarily means dealing with multiple sovereign states, it does not change the fact that one must still yield to and respect the sovereignty of the latter. Hence, the provisions on international cooperation are crucial part of the UN treaty under consideration.

9. Taking into consideration the list of offenses and liabilities proposed to be included in the UN treaty under consideration, this Delegation submits the following as priority terms for definition: property, proceeds of the crime, freezing or seizure, confiscation, computer system, computer data, service provider, traffic data, and child sexual abuse materials.

In defining these terms, we may use as framework the definitions provided for under the UN Convention Against Transnational Organized Crime, Budapest Convention on Cybercrime, Optional Protocol To The Convention On The Rights Of The Child On The Sale Of Children, Child Prostitution And Child Pornography, and Lanzarote Convention.

10 & 11. Since most of the provisions of the UN treaty under consideration will be using these terms in its substantive articles, we submit that it is crucial that member states arrive at acceptable and appropriate definitions for these terms at the earliest stage possible. We believe that by following this procedure, it would be easier for member states to reach

a consensus when asked about subsequent provisions when they have common understanding of the terms used therein.

12. A Gender perspective throughout the provisions of the convention should be taken into consideration by any or a combination of the following:

- a. Being considerate of the language, i.e., gender-neutral, to be used in the UN treaty under consideration;
- b. Consistent with the inclusive manner by which the current sessions are being held, and in order to strengthen the knowledge base about the impact of gender on the implementation of human rights in relation to cybercrimes, the Ad Hoc Committee may call on organizations and the academic community to undertake studies and share experiences that would contribute to the clarification of the gender dimensions of rights; and;
- c. In requesting data and information, a mainstream approach should be observed and must not be limited to women-specific matters. These ensure that particular rights, and measures taken for their implementation be assessed with regard to women's and men's ability to benefit from these rights and the particular measures taken for their implementation.

Thank you, Madam Chair.