

AHC Second session Vienna 30 May–10 June 2022

Statements by Georgia

Agenda item 4. Provisions on criminalization

Opening remarks

Thank you Madame chair!

At the outset, let me express our full solidarity and support to Ukraine.

Georgia strongly condemns Russia's premeditated and unjustified full-scale aggression, which constitutes the grave violation of international law and the principles of the UN Charter.

Russia's ongoing aggression has already prompted one of the fastest-growing humanitarian and displacement crises in recent history. It must be noted that this aggression also included intensive use of cyber elements.

We call on Russia to immediately and unconditionally cease its aggression and withdraw all its troops from the entire territory of Ukraine.

Let me now turn to the core business of the committee. Georgia aligns with the proposal made by the European Union and in our national capacity we would like to add the following:

We have also carefully reviewed the written proposals by other delegations and based on consultations with other parties we have observed that some of the proposed provisions are broadly agreed while on others member states differ greatly. Because of the limited time and resources and lack of consensus on many of the proposed provisions the committee should concentrate its efforts more on broadly agreed cyber-dependent crimes, specifically Illegal access, illegal interception, illegal data interference and computer system interference as well as related inchoate crimes. Only limited number of cyber enabled crimes should perhaps be considered on which there is a broad consensus. Otherwise many countries would be prevented from joining the convention. I would like to echo the idea already voiced by some of the delegations that optional protocols could be the way to accommodate the provisions that show significant support but are not universally supported.

In order to achieve consensus, we believe that the committee should rely on already existing instruments – including Budapest Convention on Cybercrime, UNTOC and other relevant documents. Furthermore, there is limited added value if any to accommodate cyber enabled crimes in this treaty that may also be covered by other treaties.

In closing, we would like to underline that the provisions of the convention (including those of the substantive and procedural law) should be carefully drafted in a way not to leave any room for abuse against human rights including freedom of expression, privacy and fair trial rights.

Thank you Mme chair!

Statement on the first and second groups of questions (as numbered in Chair's document)

Thank you Madame Chair

At the outset we would like to note that Georgia while not a member state aligns itself with the statement made by the European Union in respect of the first group of questions and would like to state the following regarding the second group of questions:

In respect of the first question, Georgia supports the idea of having a single overarching computer related fraud offence that would cover broad range of acts. Indeed, computer related fraud as defined by the proposals of some of the countries (including CARICOM, Switzerland and US based on Budapest Convention on Cybercrime) is flexible enough to properly accommodate among others theft, scam and electronic payment tools offences. Such a flexible formulation will accommodate new and emerging forms of online crimes as it has already been tested over time. Moreover, it would also give national authorities greater freedom to ensure criminalization as per domestic law principles.

As regards the second question, Georgia is of the view that the mental element should be intent for the computer related forgery, issue of adding any specific intent e.g. dishonest or fraudulent intent should be left to the discretion of domestic law.

As to the third question, Georgia does not support criminalizing *creation and use of digital information to mislead the user* under the convention. Proposed provisions are excessively vague and considering its content, raise serious concerns over freedom of expression as mentioned by several other delegations as well. In any event those acts that may be legitimately prohibited under the proposed text are sufficiently covered by either computer related fraud or forgery.

As to the fourth question, Georgia believes that identity-related offences insofar as they deserve to be addressed in an international cybercrime treaty are essentially covered by other base offences, including and most commonly by computer related fraud and forgery and may as well be captured by cyber dependent offences. Hence, there is no need to separately criminalize.

Thank you Mme chair!

Statement on the third group of questions (as numbered in Chair's document)

Thank you, Madame Chair,

Georgia would like to make the following observations regarding the third group of offences.

As regards the first question, Georgia prefers using “offences related to online child sexual exploitation and abuse materials”. It is more sensitive and less stigmatizing to children and therefore more appropriate. World's leading law-enforcement communities (including Interpol and Europol) as well as UN Child Rights Committee in various soft law documents (e.g. Luxembourg Guidelines) agreed upon the replacement of child pornography with online child sexual exploitation and abuse and we have to echo these changes. Georgia generally supports the UK, Swiss and partly Canadian versions of the 2nd proposal. We believe this proposal is much in line with the existing instruments (Budapest Convention on Cybercrime, Lanzarote Convention) that makes it easier to negotiate and achieve the broader consensus around it. The mentioned versions of the proposal also have the right choice of terminology and subtly address gaps in criminalization.

Georgia also wishes to include child grooming in this treaty as proposed by Australia and Canada. Based on domestic experience we believe this crime greatly flourished in an online environment. However, given the interventions made by several states consensus does not seem to be easily achievable on these provisions. Therefore, we are open on this issue.

We would also like to share concerns expressed by Austria and the Netherlands seeking to exclude consensual acts between children from criminalization.

As to the second question, while Georgia itself criminalizes viewing child sexual abuse materials. It is open to agreeing with opt out regime for those state parties who cannot afford such criminalization under their domestic law.

As to the third question, for the purpose of defining child Georgia agrees with the age limit to be under 18 years. It would be consistent with the *Convention on the Rights of the Child* which is almost universally accepted instrument. We however would not oppose giving states discretion to set lower age limit but not lower than 16 years.

As regards the fourth, fifth and sixth questions, Georgia does not support criminalizing any of the offences concerned. Georgia aligns itself with the group of considerable number of states who consider that the ad hoc committee should be oriented on the limited and focused criminalization of computer enabled crimes. We are not convinced any of the offences referred to in questions four, five and six warrant criminalization under this treaty.

Some of the acts mentioned in these questions (e.g. **encouragement of suicide**) are below the criminal threshold under Georgian law and in many jurisdictions around the world. While others are vaguely formulated (e.g. **involving children in illegal activities**) not sufficiently meeting foreseeability standards.

As regards specifically **sending offensive messages through communication service** may not be in line with the freedom of expression rights including under international law.

The other offences addressed in these questions in our opinion are sufficiently covered by traditional offences or do not involve noticeably distinct features when committed online. Nor does the online environment greatly facilitate commission of such crimes.

Thank you Mme chair!

Statement on the fourth and fifth groups of questions (as numbered in Chair's document)

Thank you, Madame Chair,

Georgia, while not a member state, fully aligns itself with the statement made by the European Union in respect of fourth and fifth group of offences. In our national capacity we would like to add the following:

Georgia does not support including any offence that regulates content. There is a big cultural and legal divergence on these issues across jurisdictions, and we do not believe any plausible consensus is achievable on such offences. For that reason, Georgia does not support inclusion of "Offences related to discrimination, racism or xenophobia" in the Convention. Against such speech effective remedies other than criminal are available in many countries including in Georgia. Furthermore, based on the lessons learned from earlier instruments, we believe this group of offences should be addressed in a separate optional protocol if needed. For instance, similar offences were criminalized by the first additional protocol to the Budapest Convention on Cybercrime. Only half of the states parties to the original convention joined the protocol. Majority of those who joined made a range of reservations to the protocol provisions.

As regards the other offences referred to in question 1, including drug trafficking, we believe those crimes while serious are sufficiently captured by traditional crimes treaties, including UNTOC. Therefore, we do not support including them in this treaty.

As to the questions 2 and 3

Georgia cannot also support criminalizing incitement to subversive or armed activity and extremism-related offences. Subversive activity may in many instances constitute a purely political offence on which international cooperation is generally excluded under international law. Extremism related offences as defined in relevant proposals are overly ambiguous and **leaves wide room for human rights abuses.**

Nor are we convinced to criminalize "the use of ICT to commit acts established as offences under international law" because of its open-ended and excessively vague formulation.

As to the fifth group of questions

Georgia is of the view that the treaty should include provisions on obstruction of justice, laundering of proceeds of crimes, inchoate crimes and liability of legal persons. All the mentioned concepts have been properly addressed by UNTOC and to a certain extent UNCAC. Therefore, the text of those other instruments can be relied on when drafting the provisions concerned.

Thank you, mme chair!