

U.S. Opening Remarks on General Provisions Chapter

We are encouraged yet again by the proposals for the general provisions of this treaty. We have seen thoughtful submissions for definitions, concise statements of our scope and objectives, proposals to adhere to long-standing practices on sovereignty, and ideas for ensuring that the full treaty is implemented in line with our human rights obligations. This is a good foundation for our work.

On questions one and two, the United States encourages a careful and limited set of definitions that clearly lays out the meaning of terms used in other chapters of the treaty in a technology-neutral manner that can stand the test of time. As our colleagues from Jamaica speaking on behalf of CARICOM reminded us, the definitions we need depend on the substantive provisions we agree to. Given that, we would recommend we focus our attention this week primarily on the substantive provisions of these three chapters and return again to the question of definitions like “computer system” or “computer data” when we have a consolidated text and a clearer sense of what terms we will actually need to address.

I’d like to address questions three and five together because they both relate to what provisions should be included in the general provisions overall. The

United States supports following the structure of the UNCAC and UNTOC general provisions chapters, with one proposed addition: a general provision committing us all to implement the whole treaty in line with our existing human rights obligations. While we recognize this treaty is not a human rights instrument, we must place human rights and fundamental freedoms, and the rule of law at the core of our work. As in every criminal justice treaty, we are dealing with authorities that restrain freedoms for the sake of public safety, and we must be very careful in how we exercise those powers. We recommend an overarching commitment to implement this treaty in line with our existing obligations, including under the International Covenant on Civil and Political Rights. We have a duty to ensure that criminal justice instruments like this one are aligned with our international obligations to ensure rights like fair trial guarantees and freedom of expression, including for journalists, media workers, and whistleblowers. If we as a group choose not to take this route with a general provision committing us to uphold our human rights obligations, our delegation may return with additional proposals to ensure that there are adequate safeguards and protections in this instrument.

On question four, we recognize that we have had long discussions about the purpose of this treaty already, and, in the interest of consensus, support a limited statement of purpose that focuses on the main ideas on which we all seem to agree:

prevention, investigation, and prosecution of cybercrimes and the collection and sharing of electronic evidence, including technical assistance and capacity building and mechanisms for international cooperation to achieve these objectives.

On question five, as we have said before, we support a treaty that empowers Member States to collect and share electronic evidence for all crimes, not just offenses listed in the treaty, subject to dual criminality and other safeguards as needed, and we would hope the scope of application of the convention would reflect that.

As a final note, **on question eight**, we join the chorus of proposals that recommend adhering to the UNTOC and UNCAC provisions on sovereignty without deviation. We deal in this treaty with sovereignty in the context of criminal justice measures, a well-trodden path. Both UNTOC and UNCAC deal with crimes that are being committed in cyberspace as we speak. This provision works well for them, and we should be very reluctant to make changes to it that might undermine the operation of those other instruments.