Agenda Item 7: Provisions on the Mechanism of Implementation
U.S. statement in response to Chair’s Guiding Questions (AM)

38. What mechanisms of implementation of the convention should be provided for in the convention?

39. What is the most acceptable option, from the following, for the drafting of the chapter on the mechanism of implementation:

(U) A structure similar to that established by the United Nations Convention against Transnational Organized Crime or the United Nations Convention against Corruption, namely, the mechanism of a Conference of Parties;

(U) A structure similar to that established for the implementation of the three international drug control conventions, namely, the Single Convention on Narcotic Drugs of 1961, as amended by the 1972 Protocol, the Convention on Psychotropic Substances of 1971 and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, which entrusts the Commission on Narcotic Drugs and the International Narcotics Control Board to follow up on convention implementation? For example, implementation of the convention could be considered by the Commission on Crime Prevention and Criminal Justice and be focused on targeted periodic reviews of implementation, as well as under an annual agenda item for the Commission on Crime Prevention and Criminal Justice;

(U) The establishment of a specific body for the review of the implementation of the convention, either independently or under a Conference of Parties (similar to the structure of the Committee on the Peaceful Uses of Outer Space, which has a Scientific and Technical Subcommittee)?

The United States took many factors into account when considering a body that can advance effective implementation of the Convention. The last two weeks have underscored to our delegation the importance of our work in this Committee as noted by my esteemed colleague from Brazil, we are moving into new areas focused on the future, facing an ever-changing technology landscape. When our drafting work is complete, we want to ensure that the Convention can be implemented with the best possible outcomes.

As you know, the United States is a strong supporter of both UNTOC and UNCAC. We have used those conventions successfully over 1000 times for
effective international cooperation. We look forward to the same level of success with this convention. But we have also learned from our experiences participating in the Conferences of Parties to those Conventions, as well as other Vienna-based treaty bodies, and recognize that there may be a better way to oversee this treaty rather than continuing to create a Conference of Parties simply because that is the format that we are familiar with.

As we consider the best mechanism for implementation, we must take into account practitioner burden, recognizing that many of our existing mechanisms require hours of time from our practitioners at every stage of the process. This is an issue experienced by all Member States and want to be cognizant of it as we develop our thinking on this important issue.

Secondly, financial implications must also be taken into account. Establishing a new Conference of Parties to implement this treaty will be costly. It is not clear where these costs will come from; will there be a decision to increase UN regular budget resources or will Member States be required to provide extrabudgetary resources to stand up a new Conference. These are important questions without answers. We will need clarity on any financial implications as we continue discussing the best option for implementation of the treaty.

Against this backdrop, the United States wants to think innovatively about options for the mechanism of implementation for this treaty. We propose consideration of the following: to adapt the UN Commission on Crime Prevention and Criminal Justice (or CCPCJ) to consider implementation of this treaty, using the model found in the UN Commission on Narcotic Drugs (or CND), which considers implementation of the three UN Drug Conventions.

The CCPCJ is housed within the Economic and Social Council; it meets on an annual basis; has rotating membership so Member States each have an opportunity to serve as leading Commission Members, and all UN Member States are invited to join its annual meetings; and allows for robust participation from non-governmental stakeholders in each of its regular session meetings.

The CND is treaty-mandated to review implementation of the UN drug conventions. Its reviews have led to significant strides forward in international drug control policy and serve to hold States Parties accountable for their international obligations in this area.
We should think seriously about adapting the CCPCJ to serve for this new treaty on cybercrime in the same way the CND does for the drug conventions. Adapting the CCPCJ in this way would be an effective way to assess implementation of this treaty, while also avoiding the risk of duplicative mandates across UN bodies and reducing practitioner burden and financial costs. Importantly, as an ECOSOC Commission, it offers existing opportunities for non-governmental stakeholders to engage.

Should the CCPCJ be adapted in this way, we would envision a very inclusive and transparent process for treaty implementation. Commission membership has equitable geographic representation, and irrespective of Commission membership, all Member States participate as equals. Importantly, the CCPCJ operates by consensus with each having an equal voice in the process. Any state can break consensus and require further negotiation. It would be our expectation that treaty implementation efforts would also be guided by consensus in this way.

In practice, such a model could look something like the following:

- First, an annual discussion on treaty implementation as a standing agenda item during the Commission. In the first five years following the establishment of the treaty, the United States proposes an additional three-day session, directly following the regular session of the CCPCJ, to have dedicated time to focus on the launch of treaty implementation.

- Second, a Mid-Term Review of Implementation every five years and a High-Level Ministerial Review of Implementation every ten years. We envision that the CCPCJ would decide upon the topics to be considered under each review session, and the outcomes would be shared during the following regular session of the CCPCJ. We envision that these reviews would take place over the course of two to five days, and involve the participation of stakeholders

- Third, the active participation of stakeholders with and without Economic and Social Council consultative status. The United States proposes that those organizations already accredited to the Ad Hoc Committee be accredited to participate during treaty-related items of the CCPCJ, and further proposes that the Committee develop a procedure to consider the accreditation of new stakeholders, that do not have ECOSOC consultative
status, to also be accredited to participate during treaty-related items of the CCPCJ. This participation could include a singular agenda on treaty implementation during the regular session of the CCPCJ – or the proposed three-day sessions during the first five years – and could include “ECOSOC plus” participation during the dedicated review sessions.

Finally, the United States proposes the UN Secretary-General designate the UN office on Drugs and Crime to serve as the Secretariat of the convention. UNODC has a strong background of expertise in supporting anti-crime instruments and bodies in Vienna, including in its role as the secretariat of the CCPCJ.

We welcome reactions and questions on this idea. We also welcome other innovative ideas beyond defaulting to what has been done previously. As noted by the distinguished delegate from Uruguay, we should not decide definitively on the mechanism for implementation until we have a better understanding of the treaty’s obligations; how the implementation mechanism will be funded; and assurance that the burden on practitioners from all Member States, especially those of small delegations, has been taken into account.

**40. How can the convention ensure that the implementation mechanism makes best use of the experience and expertise of relevant non-governmental organizations, civil society organizations, academic institutions and the private sector?**

Civil society, including academia, the media, and non-governmental organizations; international organizations; financial institutions; and the private sector will all play an important role in the implementation of this convention. As mentioned, the United States has proposed the active participation of stakeholders with and without Economic and Social Council consultative status in the implementation of the convention. Our hope would be that all currently accredited stakeholders to this Committee would continue to be involved with this process once the convention is launched.

**U.S. Second Statement (PM)**

Hearing the discussions from this morning, we wanted to touch again on the issue
specifically of a review mechanism for this treaty. Any review mechanism structure should:

1) Take stock of the lessons learned in UNTOC and UNCAC;
2) be tailored to the specific obligations in this treaty;
3) be fueled by participation from expert practitioners across all members states; and
4) provide for robust stakeholder engagement from existing AHC stakeholders, as well as a path for new stakeholders to join these discussions.

As we mentioned earlier, now is the time for innovative thinking about what will work best for this treaty. Looking at the CND model, our “review mechanism” could take the form of periodic high-level reviews of implementation that could take place ahead of or immediately after the CCPCJ regular sessions. It would be our expectation that such these reviews would be fueled by expert practitioners across all States Parties. States Parties could have the opportunity to prioritize thematic areas, as well as overall implementation.

It is of the utmost importance that any review mechanism facilitate an inclusive process among governments and outside stakeholders.

Separately, other interventions mentioned standing up a technical body of experts to review implementation. The United States would have serious concerns about such an effort because it runs the risk of not being inclusive and transparent. This process belongs to all of us. Any review mechanism for this treaty must reflect our shared commitment to an inclusive process that is fueled by experts.