Agenda Item 8: Final Provisions
U.S. statement in response to Chair’s Guiding Questions

As a general matter, the United States has proposed drawing on the final provisions of the UNTOC for the analogous chapter of this convention. In our view, these provisions reflect agreed language from a criminal justice treaty negotiated under similar circumstances, and have proven effective in the ratification, entry into force, and administration of that treaty. In that context, the United States responds as follows to the specific questions that guide our discussion.

41. Should the convention include a provision on the effects of the convention with a view to defining the relationship of the convention with other treaties, agreements or arrangements on matters dealt with in the convention?

The United States has not proposed an article along these lines, because we do not believe it is strictly necessary. Particularly so because our objective as a committee should be the elaboration of a practical criminal justice instrument focused on combatting cybercrime that does not overlap or interfere with established criminal justice instruments on the one hand, and established international forums and mechanisms for addressing other cyber-related issues, on the other. That said, we have heard those delegations that are in favor of such a provision, and can consider a provision along these lines. We certainly agree with those many delegations who have noted this treaty should not interfere with other treaty obligations, including human rights obligations.

42. Should the convention include a provision on the development of additional or supplementary protocols and the relationship with the convention? If so, what should be the nature of the mandated body and procedure for the elaboration and adoption of protocols to the convention?

The United States has not proposed a provision related to the elaboration of protocols. We appreciate the views of other Member States on the potential value of such a provision, and will keep an open mind as the provisions of this convention come into focus over the course of our negotiations. We agree with those delegations who have called for any protocol negotiation to be taken under the same rules of procedure as the main treaty.

43. Should the convention allow for reservations by States parties, and, if so, what should be the limitations to such reservations?
The United States believes that the convention should allow for reservations, which should be limited by the relevant principles of international law embodied in the 1969 Vienna Convention on the Law of Treaties. This includes prohibiting Reservations contrary to the object and purpose of the treaty.

44. What dispute settlement mechanism should the convention provide for?

As already referred to by several Member States, the United States has proposed the same dispute settlement mechanism as in UNTOC, i.e. by negotiation followed by arbitration, with the option for States party to reserve from the arbitration provisions.

45. What should be the number of necessary ratifications by States parties for the entry into force of the convention? How many days should pass after the deposit of the last required instrument of ratification or accession before the entry into force of the convention?

As in UNTOC, the United States has proposed a requirement of 40 ratifications for entry into force, and entry into force 90 days following the deposit of the last required instrument of ratification or accession. We are open to the proposals of Singapore, the EU, and other delegations to require a higher number of initial ratifications, in order to encourage broad participation in this new treaty from Member States.

46. Should the convention allow for amendments and, if so, what procedure should be foreseen?

As in UNTOC, the United States proposes that the convention should allow for amendment five years after the convention has entered into force, through a process administered by the body responsible for the implementation of the convention. Amendments should be adopted by consensus of the States Parties, though may be adopted by a two-thirds majority vote if efforts to reach consensus have been exhausted.