

GI-TOC STATEMENTS AT THE 4TH AHC

Fourth Session of The Ad Hoc Committee to Elaborate a Comprehensive International Convention on
Countering the Use of Information and Communications Technologies for Criminal Purposes
Vienna, 9- 20 January 2023

PROVISIONS ON PROCEDURAL MEASURES AND LAW ENFORCEMENT

Agenda Item 6

Thank you Chair,

On procedural measures and law enforcement, we would offer the following points.

On **Article 42 on safeguards**,

We appreciate that principles on both criminal justice and data protection are included in this section and think there should be even more explicit language.

We take note of the different positions this week on whether Article 42 should be included in the treaty. Suggestions that criminal justice treaties should not be bound by civil liberties clauses are concerning.

The three pillars of the UN are development, peace and security and human rights, which includes the conventions the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

In light of this current uncertainty, we believe that the scope of cooperation in both this chapter and the international cooperation chapter, should be limited solely to the serious cybercrimes that will be defined and agreed in the criminalization chapter.

From schooling to commerce to personal relationships, lives are increasingly lived online and this will increasingly be so.

If this criminal justice convention is not targeted at specific criminal offences, and does not protect standard, internationally recognized rights, then it will effectively enable expansive government powers over these virtual social, economic and cultural spaces, far beyond criminal activities, let alone cybercrime.

In this context, a clear criminalization chapter is essential in framing and guiding the cooperation measures under this convention. If they are not aligned, or if the scope for law enforcement cooperation is too broad or unclear, it is likely there will be knock-on effects on future ratification, adherence, and implementation.

On **article 41 on scope of procedural measures**,

We suggest that the scope be limited to serious cybercrimes listed in the convention. If sub paras (b) and (c) remain, we recommend using the language "serious criminal offenses as determined by dual criminality" in place of "other criminal offenses". *Other criminal offenses* could include anything and is too broad.

Article 41.3.a seems to presuppose many member states will take issue with Article 47 and 48, and we've heard that many do. For a zero draft, we agree with those who suggest the removal of 47 and 48 for this reason.

We recommend the use of computer system throughout and find information and communications technology too broad.

Thank you for the opportunity to contribute.

PROVISIONS ON CRIMINALIZATION

Agenda Item 4

We thank the Chair for the preparation and open engagement throughout this process. And we appreciate hearing the discussions and positions so far set out by states and multistakeholders.

On the criminalization chapter, GITOC will only make a few points.

We agree with those calling for the focus of this convention to be core cybercrimes – i.e. cluster one.

We also support the use of cybercrime as an established term, whose parameters this treaty is - in fact - attempting to fine tune.

Intent and Harm:

We have listened with interest to states and stakeholder positions and agree with those who have said intent and harm need to be included as a standard to protect against unintended application, for example with regard to security researchers and journalists.

Limited Scope:

We feel this treaty should not duplicate crimes addressed in other treaties. An exhaustive list of crimes may render the treaty too unwieldy to set agendas in the future and for treaty implementation.

And it would cause duplicative work across the UN system.

We do not think national security priorities should be addressed here in a criminal justice treaty, where again there are already homes for these priorities in other areas of the UN.

In this way the core treaty should be limited to cyber-dependent crimes – and therefore create a clear agenda to build stronger global cooperation to combat these crimes.

We have one overarching recommendation for the chapter. We recommend that the criminalization chapter has a clearly defined and explicit link to the following chapters, either set out in an article in this chapter or outlined in subsequent sections.

There appears to be a disconnect in scope and application in negotiations thus far on this chapter and on subsequent chapters on law enforcement and procedural measures and on international cooperation. We hope a clear line will be drawn throughout the document that connects all chapters.

Thank you for the opportunity to contribute.