

06 August 2024



ORAL STATEMENT

**Check against delivery*

UN Headquarters, New York

United Nations Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of ICTs for Criminal Purposes

Intervention during 14th meeting of reconvened concluding session (Day 7 afternoon)

Delivered by: Raman Jit Singh Chima, Global Cybersecurity Lead | Senior International Counsel and Asia Pacific Policy Director

Thank you Madame Chair, for leading this open and robust process, and for not cutting our microphones.

We support the comments made by our colleagues with R3D, and in the earlier interventions made by the UN OHCHR and HRW, that qualifiers should not be added to the language in Article 6 on human rights. We appreciate the discussion prompted by many states on Article 6 and the use of the term suppression, and note that “restriction” has been considered instead - the other legal term that states may wish to use is “interference with,” which is the phrase used in international human rights law.

Article 36 on data protection is crucial to this proposed legal framework. If that language is insufficiently strong or is further watered down, let us be very clear amongst us Madame Chair and delegates: **this convention would be “dead on arrival”** as they say, impossible for many to sign and ratify and a framework where each act of law enforcement cooperation would be challenged.

We wish to emphasize what we said last week: Articles 24 and 35 safeguards language misses the legal standard that is required. It is not merely “proportionality”, but “necessity, legality, and proportionality”. It is the standard that the UN Human Rights Council, General Assembly, Council of Europe, Interamerican Human Rights system, and many national courts have taken. **It would be extremely disappointing if proposed safeguards in Articles 24 and 35 seek to turn back the clock - or perhaps even delete - current protections around the right to privacy in a digital age.** The standard that must be used is that of “necessity, legality and proportionality”, as called for in international human rights law and numerous domestic legal systems. The “hack” that none of us want to see is a **UN Cybercrime Convention being used to delete or unjustly alter** the last two decades worth of international law on human rights and privacy in the digital age.

Procedurally, we note that interpretative notes are part of the official records of the negotiation of the United Nations Convention Against Transnational Organized Crime and the Protocols thereto, as separate documents. The notes are referenced several times in the legislative guides for the

convention. We urge the Chair to ensure that stakeholders' statements and submissions are duly and timely included in the Travaux Préparatoires.¹

Finally, we join civil society in the "Letter To Negotiating States Regarding The Chair's Proposal On Main Pending Provisions," of 6 August 2024, and highlight its assertion that we have seen language put forward which represents a further deterioration of the text compared with Revision 3, especially regarding safeguards and protections for human rights in articles 6 and 24, among others. A copy of that is available as an annexure to this statement.

Thank you Madame Chair.

¹ It appears that the notes were discussed by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions:

The interpretative notes document A/55/383/Add.1 states that "The present document contains interpretative notes that were discussed by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime throughout the process of negotiation of the draft Convention. These notes will be included in the official records of the negotiation process, which the Secretariat will prepare in accordance with standard practice. The Ad Hoc Committee was informed by the Secretariat in document A/AC.254/33 of the nature of the official records of the negotiation and of the practice regarding their drafting and compilation. The present document is submitted to the General Assembly for information purposes only. The Ad Hoc Committee took no formal action on these notes and none is expected of the Assembly at its fifty-fifth session."

The full version of the Legislative Guides for the implementation of the convention refers to the notes as a resource to provide insight into the meaning of the articles:

"13. It is recommended that drafters check for consistency with other offences, definitions and legislative uses before relying on formulations or terminology contained in the Convention. The Convention was drafted for general purposes and is addressed to national Governments. Thus, the level of abstraction is higher than that necessary for domestic legislation. Drafters should therefore be careful not to incorporate parts of the text verbatim, but are encouraged to adopt the spirit and meaning of the various articles. In order to assist in that process, a number of interpretative notes discussed by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime throughout the process of negotiation of the draft Convention will be cited in this guide (A/55/383/Add.1), providing additional context and insight into the intent and concerns of those who negotiated the Convention."

The Legislative Guide for the protocol to prevent, suppress, and punish trafficking in persons, especially women and children reiterates this use of the notes:

"Interpretative Notes have been articulated by the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime throughout the process of negotiation of the draft Protocol and Convention. The Interpretative Notes are cited in this Legislative Guide to provide additional explanations and to give insight into the intent and concerns of the drafters[16]. In addition, this Legislative Guide makes reference to the Travaux Préparatoires (official records) of the negotiations of the Conventions and the Protocols thereto[17]. The purpose of the Travaux Préparatoires is to track the progress of the negotiations of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime in order to provide insight into the issues confronted by the Ad Hoc Committee and the solutions it found."

Interpretative notes have also been adopted by the Council of Europe re: its Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism to give further guidance and lay out good practices. The Third Activity Report records that where an objection was raised and the conference could not agree on the content of an interpretative note to one of the articles, its adoption was postponed pending clarifications.



Access Now (<https://www.accessnow.org>) defends and extends the digital rights of people and communities at risk. As a grassroots-to-global organization, we partner with local actors to bring a human rights agenda to the use, development, and governance of digital technologies, and to intervene where technologies adversely impact our human rights. By combining direct technical support, strategic advocacy, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.

For More Information, please contact:

Raman Jit Singh Chima | Global Cybersecurity Lead | Senior International Counsel | raman@accessnow.org

Peter Micek | General Counsel | UN Policy Manager | peter@accessnow.org

ANNEXURE 1

Letter To Negotiating States Regarding The Chair's Proposal On Main Pending Provisions

The Office of the High Commissioner for Human Rights ([OHCHR](#)), [independent human rights experts](#), [human rights groups](#), and [industry actors](#) have all identified that the proposed Cybercrime Convention as presented at the start of the reconvened final session of negotiations (Revision 3) still contains critical shortcomings and poses unacceptable risks to human rights.

We maintain that the Convention as drafted fails to address the significant concerns raised by civil society and others and should not therefore proceed to adoption. At the same time, we took note that in recent statements and consultations relating to the draft Convention, states committed to maintain certain "[redlines](#)" and to ensure that the Convention is not further weakened from a human rights perspective compared with Revision 3.

Despite this, in the Chair's proposal on the main pending provisions of the UDTC, and in other proposals by negotiating states, we have seen language put forward which represents a further deterioration of the text compared with Revision 3 and states agreed redlines. In addition, we have heard of proposals to trade off certain protective provisions in exchange for others, where both are necessary, and, in fact, continue to fall short of the minimum level of conditions and safeguards required to mitigate risks to human rights. These include:

- Revisions to the Convention's title which introduces further ambiguity and appears to indicate there may be cybercrimes *not* committed through the use of ICTs systems. This could be interpreted as defining any criminal act committed via an ICT system (or not) as cybercrime, and will incentivise overly vague and expansive application.

- Revisions to article 6(2) to introduce a reference to “in accordance and in a manner consistent with international human rights law”. This amendment introduces unnecessary qualification that brings further confusion to the provision which appears to be aimed at undermining its protective scope.
- Proposals to delete the only reference to gender mainstreaming in paragraph 10 of the preamble or to replace it with the reference to “equality”; to compromise on changing “affirming” for “noting”; and to delete the reference to “gender-based” in article 53(3)(h) on gender-based violence which poses serious risks to gender equality and to efforts to protect the human rights of historically marginalised groups.
- Revisions to article 24(2) which limit judicial or other independent review to “review at the domestic level or as provided for in any other legally binding international instruments to which a State party is a party.” This could be interpreted to exclude other independent review bodies, including the Conference of State Parties mandated by this Convention to monitor its implementation.
- Chair’s proposal to move article 23(4) to 24(4) with some light amendments was followed by proposals by some states to delete article 24(4) which ensures the application of the conditions and safeguards with respect to both domestic criminal investigations and proceedings and for the purpose of rendering international cooperation and which is therefore of paramount importance.
- Proposals to further expand the scope of offences through a supplementary protocol to the Convention are proceeding as a given without incorporating further protective conditions required to mitigate risks to human rights.

While we have seen backsliding on a number of key provisions, we note that in other key areas, proposals to ensure protective safeguards which have received a considerable degree of support have not been taken forward, including for incorporating grounds of refusal on the basis of political offences in the chapter on international cooperation. Likewise, a proposal to facilitate additional scrutiny prior to the Convention’s entry into force through incorporating a higher threshold of ratification of sixty member states has been ignored despite significant cross-regional support.

We urge negotiating states to maintain the commitments they have made to guarantee that conditions and safeguards are incorporated throughout the draft Convention. This is necessary to mitigate some of the most substantial risks that may eventuate from the Convention’s implementation. We urge all states to honour their commitments with respect to human rights and the rule of law by providing their unequivocal support to the few carve out protections achieved in a long and difficult process.

Endorsed by:

- **Access Now**
- **Centre for Feminist Foreign Policy (CFFP)**
- **Derechos Digitales (América Latina)**
- **Electronic Frontier Foundation (EFF)**
- **Epicenter.works**
- **Fundacion Karisma**
- **Global Partners Digital (GPD)**
- **Hiperderecho**
- **International Press Institute (IPI)**
- **Red en Defensa de los Derechos Digitales (R3D)**