



Ad Hoc Committee Third Session

Global Partners Digital submission
July 2022

About Global Partners Digital

Global Partners Digital is a social purpose company dedicated to fostering a digital environment underpinned by human rights.

Introduction

We welcome the opportunity to make proposals and comments on provisions on international cooperation, technical assistance, preventive measures, the mechanism of implementation, the final provisions and the preamble of a comprehensive international convention on countering the use of information and communications technologies for criminal purposes.

Preamble

We believe that the preamble should explicitly recognise the importance of respect for human rights when countering cybercrime, complementing any substantive provisions in the convention which safeguard human rights. One of the preambular paragraphs of the Budapest Convention may provide a useful model in this regard.¹ We would propose the following:

¹ The relevant preambular paragraph reads, “Mindful of the need to ensure a proper balance between the interests of law enforcement and respect for fundamental human rights as enshrined in the 1950 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 United Nations International Covenant on Civil and Political Rights and other applicable international human rights treaties, which reaffirm the right of everyone to hold opinions without interference, as well as the right to freedom of expression, including the freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, and the rights concerning the respect for privacy.”.

Recognizing that, in countering the use of information and communications technologies for criminal purposes, states must ensure full respect for human rights as enshrined in the Universal Declaration on Human Rights and international human rights treaties, including the International Covenant on Civil and Political Rights, which, among others, affirm the rights to hold opinions without interference and to freedom of expression, and prohibit arbitrary or unlawful interference with a person's privacy, family, home or correspondence.

International Cooperation

We believe that the convention should contain provisions on international cooperation subject to strong safeguards to ensure that states do not facilitate adverse human rights impacts through cooperating with others. We would propose that the following safeguards be incorporated into the relevant provisions.

- **General principles relating to international cooperation.** We believe that the convention should set out general principles relating to international cooperation in addition to substantive provisions on what form that cooperation should take. The wording of Article 23 of the Budapest Convention and Article 43 of the UN Convention Against Corruption (UNCAC) provide useful language from which an equivalent provision could be drafted.

We would, however, recommend that the provision also contain explicit recognition of the principle that states must ensure that they fully comply with their international human rights obligations at all times when cooperating with other states. We would also like to see the provision permit states to make cooperation conditional on requirements in the requesting state's domestic law which require a higher level of protection for human rights, where this is needed to maintain parity between the states involved.

- **Extradition.** If the convention includes a provision relating to extradition, we believe that the wording of Article 24 of the Budapest Convention, Article 16 of the UN United Nations Convention against Transnational Organised Crime (UNTOC) and Article 44 of the UNCAC provide useful language from which an equivalent provision could be drafted, particularly in relation to the safeguards provided by those articles.
- Reflecting and building on the safeguards provided by those articles, we would recommend that any provision on extradition contain the following safeguards at a minimum:
 - A requirement that the alleged conduct is included within the substantive criminal offences set out in the convention and criminalised in both states. The convention should not be used as a legal basis for

- any extradition arrangements involving other forms of criminal conduct, regardless of whether it is criminalised in the states concerns;
 - A requirement that the alleged conduct be serious in nature, rather than trivial, and likely – if it led to a conviction – to result in a significant period of imprisonment (e.g. at least one year);
 - The ability for a state surrendering an individual who is a national of that state for extradition to make it a condition that the individual, if convicted, can return to their home state to serve any sentence imposed;
 - A requirement that any person regarding whom extradition proceedings are being carried out be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by international human rights law and the domestic law of the state where that person is present; and
 - An absolute right for states to refuse to extradite an individual where there are substantial grounds for believing that extradition might lead to an adverse impact upon the individual’s human rights.
- **Mutual legal assistance.** The wording of Article 25 of the Budapest Convention, Article 17 of the UNTOC and Article 45 of the UNTOC provide useful language from which an equivalent provision could be drafted. We would recommend that any provision on mutual legal assistance contain the following safeguard at a minimum:
 - An absolute right for states to refuse to provide assistance on the basis that the assistance is being sought in relation to conduct which is not included within the substantive criminal offences set out in the convention or criminalised under the state’s domestic law; and
 - An absolute right for states to refuse to provide assistance which has been requested where there are substantial grounds for believing that the provision of such assistance might lead to an adverse impact upon an individual’s human rights, or where the offence concerned is a political offence or an offence connected with a political offence.

We do not take a position on whether the convention should include provisions setting out specific forms of mutual legal assistance that should be provided, such as provisional measures to store data or investigative powers. If such provisions are included, we recommend that the provision provides states receiving requests with an explicit and absolute right to refuse to provide the particular form of assistance where (i) the the assistance is being sought in relation to conduct which is not included within the substantive criminal offences set out in the convention or criminalised under the state’s domestic law, or (ii) there are substantial grounds for believing that the provision of such assistance might lead to an adverse impact upon an individual’s human rights.

Technical Assistance

We believe that the convention should contain measures relating to technical assistance. The wording of Articles 29 and 30(2)(c) of the UN United Nations Convention against Transnational Organised Crime (UNTOC) and Articles 60 and 62(2)(c) of the UNCAC provide useful language from which an equivalent provision could be drafted. We would recommend adding an explicit element of the provisions on the inclusion of technical assistance on protecting and respecting human rights in the implementation and enforcement of the convention and relevant domestic law.

Mechanism of Implementation

We believe that the convention should contain measures setting out the mechanisms for implementation of the convention. Articles 32 to 33 of the UNTOC and Articles 63 to 64 of the UNCAC provide useful language from which equivalent provisions could be drafted. We would propose the following specific provisions:

- A Conference of the Parties to the Convention should be established to, among other things, review the implementation of the convention;
- The Conference of the Parties should be convened by the Secretary-General of the United Nations not later than one year following the entry into force of the convention.
- The Conference of the Parties should agree upon mechanisms for achieving its objectives, which should include reviewing the implementation of the convention by state parties and making recommendations to improve its implementation.
- The Conference of the Parties should acquire the necessary knowledge of the measures taken by states parties in implementing the convention through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.
- States parties should be required to provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures taken to implement the Convention.

Final Provisions

We believe that the convention should contain final provisions, including a saving clause modelled on Article 14(1) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UNTOC, and Article 19 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UNTOC. We would propose the following:

Nothing in this Convention shall affect the other rights, obligations and responsibilities of states under international law, including international human

rights law and, in particular, the International Covenant on Civil and Political Rights.