

Eticas Foundation's Oral Intervention on Chapter I, General Provisions (2nd Round)

**Delivered By Tanja Fachathaler on behalf of Eticas Foundation Fourth Session - 9 January to
20 January 2023**

As held

Madam Chair,
Honourable Representatives,

We are delighted to speak again in this forum representing Eticas Foundation and we look forward to the upcoming days of further discussion and exchange.

Article 3, Scope of applications:

Para 2: This provision should strictly apply to “serious crimes set forth in this Convention” and not go beyond it. The mechanisms set out in the chapter on procedural measures and law enforcement are highly intrusive and should therefore be limited to serious crimes in this Convention which will be required to be strictly defined. For this purpose and echoing Article 2.b of UNTOC, we suggest that the term “serious crimes” be defined as “a conduct constituting an offense under this Convention punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”

Para 3: The provision is highly problematic as it increases the likelihood of prosecuting individuals for behaviour that did not, or could not have been expected to cause harm or damage, such as security researchers or journalists, among others. Para 3 should therefore either be struck or a requirement for harm (in addition to criminal intent) should be included in the offences set out in Chapter II. And we reiterate that the offences in this Convention should only be limited to Cluster 1. If other crimes be included, then the requirement of harm and criminal intent should also be included therein, with exception for Clusters 5 and 7, as already set out in our previous intervention.

Article 4, Protection of sovereignty:

We do not oppose this Article, however, it must be ensured that its inclusion does not trump Member States' human rights obligations.

Article 5, Respect for human rights:

Para 1: We suggest the word “applicable” before “international human rights law” be deleted, so as to include various sources on international human rights law.

It should further be ensured that besides this general Article and throughout the entire Convention human rights and fundamental freedoms always be prioritized when countering cybercrime, securing electronic evidence, facilitating international cooperation or providing technical assistance. We therefore need to include specific safeguards to ensure the respect of human rights is included in other provisions (specifically in chapters III and IV). This is important so as to not risk to create a disconnect between general obligations under Article 5 and those contained in other articles. We would otherwise create the danger of legal uncertainty and a risk to be exploited by governments to justify laws and practices that do not comply with international human rights standards.

We hope to continue the discussion on these issues and remain available for further input on the individual provisions during the negotiations. Thank you.