

**Eticas Foundation’s Oral Intervention on Chapter IX, Preamble
Delivered By Tanja Fachathaler on behalf of Eticas Foundation
Fifth Session - 11 to 21 April 2023**

As held

Madam Chair,
Excellencies,
Honourable Delegates,

Representing Eticas Foundation, we welcome the opportunity to share our views on this chapter. The Preamble is an important part of the Convention as it defines, in general terms, the purposes and considerations that led the State Parties to conclude the treaty. While there is no final and agreed text of the Convention yet, we nevertheless would like to make the following suggestions:

With regard to pp 10:

We suggest modification by adding in its second part a reference to the rule of law and to add the words “respected and” before “protected”.

The sentence would then read as follows:

“Committed to promoting an open, secure, accessible and peaceful cyberspace for all, where the application of international law and the rule of law are promoted and fundamental freedoms and human rights are respected and protected.”

We have been discussing far-reaching investigation and surveillance powers here and it is therefore of great importance to highlight the rule of law in the Preamble as well.

As for fundamental freedoms and human rights: under international human rights law, states are not only obliged to respect them but also to actively protect them.

We have mentioned in an earlier statement already that strong human rights provisions and safeguards in this Convention do not aim to weaken its purpose to counter cybercrime. Right the opposite, they are an indispensable prerequisite in order for the future treaty to operate successfully while at the same time upholding existing legal standards and not undermining trust in law enforcement operations.

With regard to **pp 13**: We welcome the explicit mention of the cooperation between States and civil society as we are of the firm believe that cooperation is required in order to successfully implement the future Convention and to fight cybercrime as a whole. However, we suggest inserting the words “preventing and” before the word “combating” so that the first part of the sentence would read as follows:

“Recognising also the need for cooperation between States and civil society, academia and private industry in preventing and combating [...]”.

This reflects the inclusion of civil society in the Convention’s substantive parts, such as for example in Chapters V and VI.

As concerns **pp 15**:

First of all we suggest replacing the words “mindful of” at the beginning of the sentence with the word “acknowledging” and deleting the reference to a balance that needs to be struck between human rights and law enforcement operations. In this regard we suggest deleting this part of the sentence and replace it with “that criminal prosecution takes place within the framework of”. We further suggest adding “and fundamental freedoms” after “human rights” and we also support the deletion of the qualifier “applicable” before “international and regional human rights conventions and treaties” as this could be misinterpreted as a limitation.

So the first part of the sentence would read as follows:

“Acknowledging that criminal prosecution takes place within the framework of human rights and fundamental freedoms as enshrined in international and regional human rights conventions and treaties, [...]”

By inserting these modifications State Parties can clearly show commitment to international human rights and fundamental freedoms. In our view, this is yet another key sentence in the Preamble towards upholding trust that law enforcement operations will not lower existing human rights standards and in order to foster cooperation between states and civil society.

Finally, as concerns **pp 16** on data protection:

We support the views expressed by some last night that this is an essential sentence and join them in suggesting a significant strengthening, given the potentially very intrusive and far reaching investigation and surveillance tools in the hands of law enforcement and the exchange of electronic evidence.

More specifically, we suggest deleting the words “Mindful also of” and instead insert the word “acknowledging” so that the first section of the sentence would read as follows:

“Acknowledging the right to the protection of personal data, [...]”.

Thank you, Madam Chair.