

Concept Note on the Human Rights Provisions of the Draft Convention on Countering the Use of Information and Communications Technologies (ICT) for Criminal Purposes

Taking into account that the Convention should be aimed at countering ICT crimes and protecting human rights against ICT-related criminal acts, the draft treaty should not become a document that protects the rights of criminals and establishes more rights for the perpetrator than for the victim.

Repletion of the future criminal law instrument with excessive human rights provisions threatens a successful outcome of the consultation process and makes it difficult to concentrate on negotiating the more important draft provisions which are key taking into account the subject matter of the future international treaty. States parties urgently need to find mutually acceptable solutions in their common interest.

Article 5 of the draft convention covers the issues connected with human rights guarantees in full. It contains references to international treaties already agreed upon within the UN. Furthermore, Chair's proposal on disputable articles, including 3, 5, 17, 24 and 35, as of February 8, 2024 contains reference to the already existing domestic mechanisms.

Moreover, the document sets out provisions for international cooperation that also ensure the protection of human rights. Thus, Article 36 stipulates the necessity to ensure the security of personal data. Articles 37 (paragraphs 8, 13, 17), 40 (paragraphs 7, 20) and 42 (paragraphs 4 and 5) include a number of grounds for a refusal to provide mutual assistance. These provisions guarantee adequate protection of human rights against arbitrary infringements also taking into account the emergence of latest technologies.

Reputable criminal law instruments including the UN conventions against transnational organised crime as well as against corruption do not have such detailed human rights regulations.

The states that have always opposed the idea of developing the Convention and UNGA Resolution 74/247 are making proposals to supplement the draft document in the field of criminal cooperation with newly invented disruptive language (repression of expression, conscience, belief, peaceful assembly or association, etc.). They lead to increased complexity in the interaction among developing countries. As well as aim to exclude possible cooperation from the scope of the Convention, thus depriving the developing states of its key benefits: technical assistance, capacity building, technology transfer, broad exchange of electronic evidence.

Excessive attention to human rights provisions in the Convention is significantly detrimental to international cooperation and will in fact hinder the cooperation between law enforcement agencies of states parties. The Russian experience of cooperation with Western countries on various regional platforms (including European ones) proves that this issue is used to promote opportunistic interests and politicise discussions.

Therefore, the relevant human rights articles included in the Chair`s draft, as amended on November 6, 2023, are quite sufficient for efficient international cooperation with the aim of fighting ICT crimes. The additional proposals on this issue announced during the Seventh Session of the Ad Hoc Committee are excessive. They set an unacceptable precedent in international law in the field of countering crimes committed with the use of information and communications technologies.