Statement by the Representative of Japan
at the Fourth Session of the Ad Hoc Committee
to Elaborate a Comprehensive International Convention
on Countering the Use of Information and Communications Technologies
for Criminal Purposes
(Agenda Item 4)

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Thank you, Madam Chair. I would like to begin by adding our voice to other distinguished delegates who thanked you, your team, and the secretariat for all you have done to prepare this session. Especially, we are pleased to see the consolidated negotiating document respects the languages of existing international instruments as much as possible as is clearly set forth in OP 2 of A/RES/74/247 and OP 11 of A/RES/75/282. Japan would like to provide substantive comments on the criminalization provisions.

Madam Chair,

Regarding **Cluster 1**, Japan supports criminalizing all the acts included in this cluster. Cluster 1 is composed of cyber-dependent crimes, which undermine the confidentiality, integrity, and availability of information. It is important to have a robust discussion on these basic and essential articles, paying particular attention to the different wording in existing treaties, so that the Convention will be adopted by consensus. The Plenary should primarily focus on the discussion of Cluster 1.

For example, in **Articles 8 and 10**, the acts and objects to be covered need appropriate limitations. In the second round, Japan will propose concrete amendments. Also, **Articles 6, 8, and 9** contain paragraphs on aggravating factors, but if we tried to include such paragraphs in every article of this Convention, there would be no limits. It should be left to the domestic law of each country, and the general provision of Article 39, paragraph 1 would be sufficient.

Madam Chair,

Clusters 2 through 9 are about cyber-enabled crime. In order to reach consensus in our limited time, it is important to focus the discussion on offenses that meet the following three criteria.

First, the offense must be one that can be defined in a way that all countries can agree upon and for which there are empirical reasons that require punishment. In this regard, several articles, such as **Articles 15, 19, and 21**, as well as **Clusters 6 and 8,** are either too broad in terms of the scope of punishment or too early in terms of the timing of punishment, considering the balance between respect for human rights and the need for investigation. Japan calls for these articles to be amended or deleted.

Second, the criminalization of an offense must have sufficient significance in the Convention to be classified as a cybercrime. Such offenses include those whose scope, speed, and extent of damage are increased by the use of computers. From this perspective, we request that articles such as **Articles 13 and 24** and **Cluster 9** be deleted, as this is a conventional and common crime and there is no reason to stipulate a provision on criminalization that applies only to such acts carried out via the Internet.

Third, there should be no overlap with other offenses established under this Convention. It is not a good strategy to criminalize individual *modi operandi* in order to respond effectively to the development and refinement of criminal techniques. In light of this, we believe that several articles, such as **Articles 14 and 16**, could be integrated into other articles.

Madam Chair,

Regarding **Cluster 2**, we support **Articles 11 and 12**. Both articles need to be discussed, especially the parts that are worded differently than in existing treaties, and appropriate limitations must be placed on the acts and objects covered by the articles. In the second round, we will propose specific amendments.

We oppose **Articles 13 and 14**. Acts such as the theft of property and the illegal acquisition of rights, which are criminalized in Article 13, are conventional, common

crimes. There is no reason to stipulate a provision on their criminalization that applies only to such acts carried out via the Internet. Furthermore, it is difficult to argue that the destruction of data or other interference and the theft of property are generally associated with each other.

Article 14 is not acceptable as it criminalizes individual criminal techniques. Also, it is too early to punish an offender at a stage when no actual damage has been caused, without requiring dishonest intent. At a later stage, when actual property damage has occurred or the intent to cause property damage becomes clear, the offender becomes punishable under Articles 6 and 9 through 12, which makes Article 14 redundant.

None of the articles in **Cluster 3** need to be included in the Convention.

First, **Article 15** does not include elements related to the misuse of cyberspace and goes beyond the mandate of the Ad Hoc Committee. Even if the provision were amended to criminalize offenses committed only through the Internet, it is not a good idea to criminalize segmented *modus operandi*, which is becoming more sophisticated by the day. We interpret that Article 15 is intended to penalize attempts to derive economic benefit from access to personal information without assuming that such access to personal information itself causes damage. However, it is too early to punish such perpetrators when no actual damage has been caused yet. Furthermore, “personal information” can include a wide range of information. Should the use of personal information lead to the commission of serious crimes, the scope should be limited to information where there is a clear possibility of doing so. What constitutes such information varies by region and era, and it may be difficult to uniformly define such information in the Convention.

As for **Article 16**, it is sufficient to have Article 10, paragraph 1 in place of subparagraph (a) and Article 6 in place of subparagraph (b), and there is no need to introduce a separate provision.

Regarding **Article 17** in **Cluster 4**, data can be copied and content can be easily reproduced on the Internet, and such content spreads fast, which can increase the extent of copyright infringement. Copyright infringement is precisely the type of crime that should be criminalized as cybercrime, as the use of computers increases the scope, speed,

and extent of damage. Japan strongly supports the criminalization of the infringement of copyright and related rights under this Convention.

On **Article 18** in **Cluster 5**, we support the criminalization of offenses related to online child sexual abuse or exploitation material. That said, details such as whether the scope of punishments in relation to freedom of expression is too broad need to be discussed and examined, especially in areas where the wording differs from that of existing treaties. For example, paragraph 2(e) is not appropriate for inclusion because it is broad and unclear in scope and differs significantly from the previous concept of child pornography.

We oppose **Article 19** because it is sufficient to punish complicity in the crime under Article 18. The scope of the term "facilitating" is ambiguous, and the article may have chilling effects on technological development. Since it is difficult to assume a computer system used solely for child abuse material, the need to criminalize the creation of such computer systems is unclear.

Article 20 requires careful consideration as to whether it is necessary and relevant. If grooming is criminalized under this Convention, it is necessary to limit the scope of punishment by defining the appropriate elements of the crime to acts that are objectively recognized as likely to lead to a sexual offense, not only on the basis of subjective elements, but also on the basis of objective elements.

Japan opposes **Article 21**. It overstretches the scope of punishment only to prohibit the "arrangement of a meeting with the child for the purpose of engaging in sexual intercourse, sexually explicit conduct, or unlawful sexual activity." An act of arranging such a meeting with a child can be punishable under Article 20, and it is not appropriate to enact a detailed provision separately. Even leaving aside the premature imposition of punishment, it is unrealistic to prove that a perpetrator intended to sexually exploit a child at such an early stage as obtaining personal information. We therefore question the need for Article 21.

Regarding **Cluster 6**, even if such articles were to be included, they should be considered extremely carefully and the scope of punishment should be very limited, as both articles could constitute a restriction on freedom of expression.

The current wording of **Article 22** is vague and broad, and Japan cannot accept it.

On **Article 23**, we understand that there have been cases of abetment of suicide over the Internet, which became a social problem, but the term "encouragement" is too vague to be used in the Convention.

Regarding **Article 24** in **Cluster 7**, extortion and intimidation by threatening to distribute/ disseminate intimate images can be punishable as a conventional crime, even when the communication is made via the Internet. Therefore, we believe there is no need to include this provision in the Convention.

As for **Article 25**, this provision needs to be carefully examined as the domestic legal systems of Member States against non-consensual disseminations of intimate images, including when the offense is conducted offline, are considered to differ.

Madam Chair,

We strongly oppose the inclusion of any articles in **Cluster 8**. When criminalizing acts related to harmful content on the Internet, Member States must not forget the importance of protecting freedom of expression and it is necessary to avoid any chilling effect on expressive activities. Therefore, acts related to harmful information on the Internet should be criminalized only if all Member States can agree on their definition and there are demonstrable grounds supporting the need for punishment. In addition, we are faced with controversial issues of whether acts should be treated as cybercrimes simply because they are committed over the Internet, and whether there is no problem regarding the non-extradition of political offenders, while we have limited time to negotiate this Convention. Therefore, in order to make this Convention a treaty that as many Member States as possible can conclude, **Articles 26 through 28** should not be included.

We also believe that provisions such as **Article 26** should not be used to control speech by a State. It is the responsibility of the Ad Hoc Committee to carefully discuss the content of the Convention to prevent such a situation.

As for **Cluster 9**, we also strongly oppose all of the articles because crimes specified in these provisions can be considered conventional crimes even if they are committed over the Internet, and also because there is overlap with existing frameworks.

Regarding **Article 29**, we should be careful not to duplicate existing frameworks such as UNTOC. If we intend to include such a provision in this Convention, we need to refer to the discussions at the time the existing treaties were formulated to avoid including provisions that the drafters of those existing treaties intentionally chose not to include. Given the limited time and resources available to negotiate this Convention, this is not an issue we should address as a priority in the Ad Hoc Committee.

Acts related to **Article 30** should be addressed in existing frameworks such as the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which 191 countries have already concluded. Without specifying what constitutes "narcotic drugs and psychotropic substances" and "material necessary for their manufacture," it is not possible for each State to adopt measures to meet its criminalization obligations, but establishing such a list is outside the mandate of the Ad Hoc Committee, nor can it be discussed within the limited time of the negotiation sessions. It would be difficult to criminalize illicit trafficking if there is no common understanding of what constitutes "illicit".

Articles 31 and 32 have the same problems as Article 30.

Madam Chair,

With regard to **Article 33** in **Cluster 10**, Japan generally supports the draft based on UNCAC, although we cannot give a definitive answer until it is determined which acts are to be criminalized under the Convention. However, regarding paragraph 2, subparagraph (b), the use of the word "relevant" in reference to predicate crimes is too vague.

We oppose the inclusion of **Article 34**. Unlike the crimes covered by UNCAC and UNTOC, cybercrime is not necessarily a category of crime that typically places undue pressure on witnesses. There is little need to include such a provision in the Convention.

Regarding **Cluster 11**, we generally support **Article 35**, with paragraphs 1 through 5, while we cannot give a certain answer until we see what offenses the criminalization chapter covers. Meanwhile, as many Member States have argued, this Convention should not impose direct obligations on the private sector. Therefore, the need for paragraph 6 should be discussed only after the other chapters have been discussed.

Article 36 could constitute an excessive interference with the domestic legislation of each country by uniformly requiring punishment of attempted crimes or aiding and abetting crimes, or requiring punishment at the stage of preparation or conspiracy that has not yet constituted an attempt. The criminalization of these acts should be left to the domestic legislation of each Member State. Therefore, we need to carefully consider paragraph 1, but support the draft paragraph 2, which leaves it to the domestic law of each country to determine whether and how to criminalize attempted crimes.

Japan supports the draft of **Articles 37 and 38**, which are based on existing treaties.

On **Article 39**, we support the draft with the exception of paragraph 2. On the one hand, paragraph 1 is particularly important to avoid complicating the provisions on criminalization. On the other hand, the Convention should only seek criminalization, and the sentencing should be left to the discretion of each State Party. We therefore oppose stipulating aggravating factors as in paragraph 2.

Last but not least, Russia's aggression against Ukraine is a clear violation of international law, inter alia the United Nations Charter. Japan condemns Russia in the strongest terms and stands with Ukraine and the people of Ukraine.

I thank you, Madam Chair.