

**Explanatory notes on the Updated draft text of the convention
and the revised draft General Assembly resolution**

15 July 2024

The present document contains explanations of the amendments reflected in the Updated draft text of the convention (UDTC, [A/AC.291/22/Rev.3](#)) made to the Further revised draft text of the convention (FRDTC, [A/AC.291/22/Rev.2](#)), as well as explanations of the Revised draft resolution for consideration by the General Assembly ([A/AC.291/25/Rev.1](#)) and the amendments made to its previous version ([A/AC.291/25](#)), which were considered by the Ad Hoc Committee to Elaborate a Comprehensive International Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes at its concluding session held from 29 January to 9 February 2024. These explanations were prepared by the Chair of the Ad Hoc Committee, with the assistance of the secretariat, and aim at facilitating the consideration of the UDTC and the draft General Assembly resolution at the reconvened session of the Committee, to be held in New York from 29 July to 9 August 2024. The changes were made on the basis of the discussions held during the second week of the concluding session, as well as the feedback of Member States to the Chair's proposal on articles 3, 5, 17, 24 and 35 ([A/AC.291/CRP.18](#)). In relation to those provisions that remain the same as in the Draft text of the convention (DTC, [A/AC.291/22](#)) and the Revised draft text of the convention (RDTC, [A/AC.291/22/Rev.1](#)), reference is made to the Explanatory notes on the Draft text of the convention¹ and the Explanatory notes on the Revised draft text of the convention.²

The document also provides context for the Interpretative notes on specific articles of the updated draft text of the Convention ([A/AC.291/27](#))³ and contains explanations of the relevant provisions of the FRDTC regarding the amendments made to the RDTC, where such provisions have been retained in the UDTC, on the basis of the discussions held during the first week of the concluding session.

Revisions to cross-cutting issues

The following cross-cutting issues, discussed at the Ad Hoc Committee's concluding session and included in the FRDTC, have been retained in the UDTC:

Use of terms

The terminology used follows the outcome of the open-ended co-facilitated informal negotiations on article 2 (Use of terms) held from the fourth to the concluding session of the Ad Hoc Committee.⁴

¹ *Explanatory notes on the Draft text of the convention* (26 July 2023), available on the [webpage of the sixth session](#).

² *Explanatory notes on the Revised draft text of the convention* (24 January 2024), available on the [webpage of the concluding session](#).

³ The interpretative notes aim at reflecting the understanding of the Ad Hoc Committee of certain provisions. They would be considered and approved by the Ad Hoc Committee and may be annexed to the report of the concluding session. No action would be expected nor required of the General Assembly.

⁴ With regard to the term "cybercrime", some delegations noted at the 17th meeting of the concluding session that agreement on some provisions of the FRDTC that had been marked as "agreed ad referendum" by the Ad Hoc Committee during its reading of the RDTC continued to depend on a final decision on the use of specific terms. Specifically, those were the provisions containing the terms "[cybercrime] [the use of information and

“Offences established in accordance with this Convention” / “offences covered by this Convention”

At the concluding session, several Member States emphasized the difference in scope between “offences established in accordance with this Convention” and “offences covered by this Convention”. According to those discussions, “offences established in accordance with this Convention” would be limited to the offences established in accordance with articles 6 to 16 RDTC (i.e., articles 7 to 17 UDTC), which thus now reflects the scope set forth in article 3, paragraph (a) UDTC. In contrast, “offences covered by this Convention” would cover a broader scope of criminalization, reflected in article 3, paragraph (b), with reference to article 23, paragraph 2(b) and (c) and article 35, paragraph 1(b) and (c) UDTC. Accordingly, these offences may include serious crime, including serious crimes established in accordance with other applicable United Nations conventions and protocols.⁵

In the FRDTC, keeping with the approach of a narrowly defined criminal law instrument, the references to “offences covered by this Convention” were replaced by “offences established in accordance with this Convention”. The sole exceptions are the preambular paragraphs (PPs) 7 and 10, and chapter VII on technical assistance and information exchange, where discussions indicated that a broader scope appeared desirable.

References to stakeholders

The FRDTC reverted to the approach taken in the DTC, namely to list those stakeholders relevant for the purposes of each specific provision.⁶ This approach was taken after several Member States expressed concern about the definition of “relevant stakeholders” in article 2, paragraph (o) RDTC, which sought to reflect the content of operative paragraph (OP) 9 of resolution 75/282 and to replace all enumerations of stakeholders throughout the draft text.⁷

References to the Secretariat and the Secretary-General of the United Nations

While the DTC and the RDTC designated specifically the United Nations Office on Drugs and Crime (UNODC) to provide the necessary secretariat service to the Conference of the States Parties to the Convention⁸ and entrusted it with the corresponding tasks,⁹ the FRDTC designated this role to the “Secretary-General of the United Nations”.¹⁰ The Secretary-General would designate UNODC to serve as the secretariat for and under the direction of the Conference of the States Parties, in accordance with OP 8 of the Revised draft resolution for consideration by the General Assembly. Accordingly, the draft convention would not differentiate the functions of the Secretary-General in providing services as treaty depositary from those as secretariat to the Conference of the States Parties. This distinction would continue to be made through an internal distribution of labour within the United Nations Secretariat.

communications technologies for criminal purposes]” and “[cybercrime] [offences committed with the use of information and communications technologies]”.

⁵ See art. 4 UDTC.

⁶ FRDTC, PP 9; art. 34(4); art. 53(2) and (3)(a); art. 54(4) and (6); art. 55(1); art. 56(2)(d); art. 57(5)(b) and (c) and (7).

⁷ RDTC, preambular paragraph (PP) 9; art. 34(4); article 53(2); art. 54(4); art. 55(1); art. 56(2)(d); art. 57(5)(c) and (6).

⁸ DTC/RDTC, art. 58(1).

⁹ DTC/RDTC, arts. 16(2)(d); art. 37(19); art. 40(11)(c) and (12); art. 41(2); art. 50(5); art. 53(7); art. 57(2); art. 58(2); art. 58(2)(c); art. 65(1).

¹⁰ FRDTC, art. 16(2)(e); art. 37(19); art. 40(12)(c) and (13); art. 41(2); art. 50(5); art. 53(7); art. 57(2); art. 58(1); art. 65(1).

Title: United Nations Convention against Cybercrime (Crimes Committed through the Use of an Information and Communications Technology System)

The title chosen in the FRDTC has been retained in the UDTC as the short title of the Convention. The addition of a new, longer title in parentheses further specifies the term “Cybercrime” as “Crimes Committed through the Use of an Information and Communications Technology System”. It is important to note that this term equally refers to the offences established in accordance with the Convention, given the common understanding of the term “Information and communications technology system” defined in article 2(a). This proposal aims to reconcile the positions of those Member States that prefer the title “United Nations Convention against Cybercrime” and those that favour “United Nations Convention on Countering the Use of Information and Communications Technologies for Criminal Purposes”.¹¹ As several Member States seem to consider the latter proposal to be broader in scope, the title was modified to correspond to the term “Information and communications technology system” as contained in article 2(a) UDTC.

Preamble

The preamble of the UDTC retains the amendments made to the PPs of the FRDTC¹² during the concluding session, with a few additional modifications.

PP 3 UDTC reproduces PP 3 FRDTC. In the FRDTC, the terms “and transnational organized crime, such as” were added after “terrorism” to provide a non-exhaustive enumeration of types of transnational organized crime whose scale, speed and scope are augmented by the use of an information and communications technology (ICT) system.

PP 4 UDTC reproduces PP 4 FRDTC. In the FRDTC, the term “common criminal policy” was replaced by “global criminal justice policy”. In the UDTC, the insertion of the phrase “crimes committed through the use of an information and communications technology system (hereinafter ‘cybercrime’)” introduces the subject matter of the draft Convention and seeks to reflect the balance introduced to its title. As mentioned above, it is worth noting that the crimes referred to in the title as well as in this paragraph are those established in accordance with the Convention.

PP 6 UDTC reproduces PP 6 FRDTC. In the FRDTC, the word “including” was exchanged with “inter alia” for editorial purposes, while the phrase “including transfer of technology on mutually agreed terms” was inserted to highlight its critical importance for the implementation of the Convention. In PP 6 UDTC, “where possible” has been added before “transfer of technology on mutually agreed terms” to align the paragraph with the wording of article 54, paragraph 1.

PP 8 UDTC reproduces PP 8 FRDTC. The UDTC further specifies the scope of the recovery and return of proceeds of crime by including “of the crimes established in accordance with this Convention” at the end of the provision.

¹¹ Reference is made to the discussion of the title of the Draft General Assembly resolution, considered by the Ad Hoc Committee at its concluding session and circulated to Member States with the amendments proposed at the 11th meeting on 5 February 2024.

¹² With regard to the elaboration of the preamble of the FRDTC, reference is made to the discussions held during the concluding session on the basis of the proposals made by the Chair in the working document *Revised preamble* (28 January 2024), available on the [webpages of the concluding session](#).

PP 9 UDTC reproduces PP 9 FRDTC. This provision underscores the responsibility of each State to prevent and combat cybercrime and the importance of international cooperation among States as well as the stakeholders listed in General Assembly resolution 75/282.

PP 10 UDTC reproduces PP 10 FRDTC. In the FRDTC, the reference “in accordance with domestic law” was added at the end of the provision. To further facilitate consensus, the word “relevant” has been added in the UDTC, to qualify all “efforts to prevent and combat [...]”.

PP 12 UDTC reproduces PP 12 FRDTC. In the FRDTC, the phrase “unlawful interference with privacy, including the protection of personal data” was exchanged with “arbitrary or unlawful interference with one’s privacy, and the importance of protecting personal data” in order to align its wording with article 17 of the International Covenant on Civil and Political Rights, and to use gender-neutral language.

PP 14 was added to the UDTC to recall the founding resolutions of the Ad Hoc Committee, which had already been referenced in PPs 1 and 2 of the (Revised) draft General Assembly resolution.

Article 2. Use of terms

Article 2 UDTC reproduces article 2 FRDTC, with two amendments.

First, the UDTC removed the definition of the term “child” from former paragraph 1 (i). The discussions of the Ad Hoc Committee have shown that divergences persist on whether to use the definition contained in the Convention on the Rights of the Child¹³ (CRC) or the one contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol).¹⁴ As a compromise, the Chair proposes not to define the term “child”, and to leave the interpretation of this term in the relevant articles of the Convention to the domestic law of States Parties. The definition of “child sexual abuse or child sexual exploitation material” (CSAEM) contained in article 14, paragraph 2, has been amended to establish a uniform age threshold of 18 years in accordance with the prevailing international legal framework on the prohibition of CSAEM.¹⁵

Second, the content of paragraph 2 of article 2 FRDTC, which aimed to underscore the flexibility of States Parties to use terms different from those used in the Convention when translating the Convention’s obligations into domestic law, has been moved from the draft text to the Interpretative notes. The placement of this provision in the Interpretative notes reflects the views of most Member States, expressed at the concluding session. According to this view, it is generally accepted that the implementation of an international treaty would not require its States Parties to apply in their domestic law the exact same terms as set out in the relevant treaty. The UDTC therefore follows other criminal justice conventions that do not contain such a provision, particularly the United Nations Convention against Transnational Organized Crime¹⁶ (UNTOC) and its Protocols as well as the United Nations Convention against Corruption¹⁷ (UNCAC).

¹³ United Nations, *Treaty Series*, vol. 1577, p. 3.

¹⁴ United Nations, *Treaty Series*, vol. 2237, p. 319.

¹⁵ See pp. 8-9, *infra*.

¹⁶ United Nations, *Treaty Series*, vol. 2225, p. 209.

¹⁷ United Nations, *Treaty Series*, vol. 2349, p. 41.

Article 3. Scope of application

Article 3 UDTC incorporates article 3 of the above-mentioned Chair's proposal, which reflects the outcome of the discussions held in the open-ended informal meetings of the concluding session. In comparison to the original article 3 DTC, the provision was restructured during the concluding session to contain a chapeau and two paragraphs that reflect the two prongs of the Convention's scope.

Paragraph (a) provides the scope of application on the prevention, investigation and prosecution of the offences established in accordance with the Convention.

Paragraph (b) pertains to the second prong of the Convention's scope, which concerns the collection, obtaining, preservation and sharing of evidence in electronic form, governed by articles 23 and 35 UDTC. The reference to these two articles was inserted in the last sentence for clarity.

Article 4. Offences established in accordance with other United Nations conventions and protocols

Article 4 UDTC incorporates article 60bis of the Chair's proposal. While this provision could be placed in different parts of the text, the Chair is of the view that its placement in the chapter on General Provisions is the most appropriate given the current structure of the treaty and the need to balance different proposals. This provision derives from article 17 DTC, which has undergone several revisions since the Ad Hoc Committee's sixth session.

Paragraph 1 affirms that States Parties shall ensure that all "offline" crimes established by United Nations conventions and protocols are also prohibited under their domestic law if committed "online". This provision makes the Convention complementary to other United Nations criminal justice conventions and protocols and ensures the harmonization of States Parties' efforts in countering crime regardless of the means by which it is committed. Ensuring that all crimes committed offline are also prohibited online is, in light of the principle of dual criminality, essential to international cooperation for the collection, obtaining, preservation and sharing of evidence in electronic form on serious crime under article 35, paragraph 1(c).

Paragraph 2 has been included based on a proposal made by Member States during the open-ended informal consultations of the sixth session,¹⁸ which received broad support. This provision clarifies the purpose of article 4 by specifying that it does not aim to create a new category of offences under the Convention, but rather to enable the use of new mechanisms established in the Convention, such as those under the chapters on procedural measures and law enforcement and international cooperation, to address crimes committed by means of an ICT system, as specifically provided in the Convention.

Article 6. Respect for human rights

Paragraph 1 of article 6 UDTC incorporates former article 5 of the Chair's proposal, which has been retained as an overarching high-level declaration that all measures taken to implement the Convention are guided by the human rights obligations undertaken by each State Party.

Paragraph 2 is a proposal of the Chair, which builds on and narrows down aspects of paragraph 1, based on a proposal made by several Member States. The inclusion of this provision aims to alleviate

¹⁸ *Working document of the informal open-ended meeting on Group 4* (1 September 2023), available at: www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Informals/AHC6_informal_meeting_31082023_edited_by_co-chairs.pdf.

the concern expressed by several delegations regarding the broad range of crimes that the notion of “serious crime” may encompass. It is worth noticing that although the definitions of serious crime contained in article 2(h) UDTC and in article 2(b) UNTOC are the same, UNTOC applies to serious crime when two additional requirements are met: the offences must be transnational in nature and involve an organized criminal group (which include the criteria of a direct or indirect financial or other material benefit). By such additional requirements, UNTOC effectively excludes from its scope of application certain non-material or financially-driven conduct (such as political or morally motivated conduct). Since such narrowing qualifiers have not been attached to the definition of serious crime in the context of the present Convention, and there is concern about the unprecedented wide scope of application of a United Nations treaty in relation to this concept, the introduction of paragraph 2 aims at excluding certain behaviours, which could be treated differently across jurisdictions when it comes to their criminal character or gravity. Therefore, this provision reaffirms that the Convention must not be interpreted for the purpose of violating any human rights, whether economic, social and cultural rights or civil and political rights. The provision includes a non-exhaustive list of rights considered to be particularly susceptible to violations by measures aimed at countering cybercrime. The last half-sentence “in accordance with applicable international human rights law” is a general reference to the rules set forth in applicable human rights instruments. These rules, which include the permissibility of restrictions of certain human rights and fundamental freedoms, under specific circumstances, also serve as a common reference for assessing the existence of a human rights violation.

Articles 7 to 13. Offences against the confidentiality, integrity and availability of an ICT system and/or electronic data, and ICT system-related forgery, theft or fraud

With the exception of the necessary terminological changes in accordance with article 2, the offences contained in the FRDTC against the integrity, confidentiality and availability of electronic data, as well as the offences on ICT-related forgery and ICT-related theft or fraud, have largely been retained unchanged in the UDTC.

The positions expressed by Member States at the concluding session on the intent requirement in paragraph 2 of articles 6, 7 and 11 RDTC varied between either retaining “dishonest intent”, or replacing it with “criminal intent”, “unlawful intent” or “unlawful aim”, or using the wording “dishonest or criminal intent” as a compromise. This compromise was eventually included in the FRDTC, and has been retained in the corresponding articles 7, 8 and 12 UDTC, in order to accommodate the specificities of domestic legal systems that employ different terms for such specified intent requirements.

Only in article 13 UDTC, on ICT-related theft or fraud, the term “criminal intent” has not been included in the chaussette of the provision. As expressed by some Member States during the concluding session, amending the intent requirement of this provision with “criminal intent” could risk an unintended expansion of the scope of this article, which by its very nature as a fraud provision inherently requires “fraudulent or dishonest intent”. Moreover, the scope of this provision, which is mandatory – unlike the discretionary paragraphs 2 of articles 6, 7 and 11 FRDTC –, has been considerably extended through the inclusion of paragraph (c), which prohibits the deception of a person through an ICT system, in relation to factual circumstances, with a view to causing a loss of money or other property.

Article 14. Offences related to online child sexual abuse or child sexual exploitation material

Paragraph 1: Basic conditions for criminal liability

Paragraph 1 has largely been retained as proposed in the FRDTC. It was noted that a number of Member States expressed concern about the term “without right”, which was perceived as creating legal gaps for impunity, since none of the acts enumerated in paragraph 1 could, in principle, be done “with right”, and that exceptions for law enforcement necessities would be adequately covered by the term “intentionally” or general principles of domestic criminal law. In contrast, a large majority of Member States called for the retention of the provision as drafted in the RDTC, including the term “without right”, as this element would be required for this offence to be implemented in accordance with their domestic law and consistent with their international obligations, particularly in order to exempt material that is necessary for law enforcement activities, or material that has scientific, medical, artistic, or other legitimate purposes.

It should be emphasised that the notion “without right” is a context-specific requirement for criminal liability that enables Member States to apply or not apply this offence, in accordance with their domestic law and their international obligations. Moreover, under the domestic law of certain Member States, law enforcement authorities require an exception for each of the acts enumerated in paragraph 1 because each of those acts may be relevant for activities related to the prevention, investigation and prosecution of the offence. Member States may also be under an international obligation to exempt certain conduct from criminalization, in particular obligations under international or regional human rights law. In particular, the right to freedom of expression, artistic expression, academic freedom, or the right to work could be affected by the deletion of the term “without right”, as it could arguably be understood as depriving States Parties of sufficient flexibility to allow legitimate activities that involve material that is not used “for sexual purposes” and would, therefore, not be prohibited. While “without right” provides States Parties a certain degree of flexibility, it does not establish impunity. Any abuse of professional prerogatives or human rights aimed at the deliberate commission of the acts prohibited under paragraph 1, that is, without pursuing a legitimate but sexual purpose, would remain prohibited. The determination as to whether a person has abused their rights or professional privileges in order to commit any of the acts prohibited in paragraph 1 shall, as in any criminal case, be the subject of a judicial proceeding by a competent, independent and impartial tribunal established by law. Due to the systematic use of this expression throughout the criminalization chapter,¹⁹ the term “or unlawful authority” has been deleted for reasons of consistency and as it sought to address the same conduct as the term “without right”.

Subparagraph 1 (d) was included in the FRDTC and has been reformulated for editorial purposes in the UDTC. This provision is a compromise proposal made by one Member State to bridge the divergences between those Member States that requested the inclusion of a mandatory stand-alone offence on the financing, facilitating, or profiting from the offences established under paragraph 1, as contained in the DTC, and those Member States that were against this inclusion, as such conduct would already be covered by articles 17 (Laundering of proceeds of crime) and 19 (Participation and attempt). As the lowest common denominator, and because this provision is optional, it has been retained in the UDTC.

¹⁹ With the exception of arts. 15 and 17 UDTC.

Paragraph 2: Definition of CSAEM

Paragraph 2 has been amended in accordance with the underlying rationale of the deletion of the definition of the term “child” from article 2, while aligning the substance of article 14 UDTC with the pertinent international rules applicable to CSAEM under the CRC, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC),²⁰ as well as the Trafficking in Persons Protocol.

At the concluding session, the age below which relevant material would constitute CSAM and should consequently be prohibited constituted a salient contentious issue. A number of Member States called for the age of 18 years, as defined in the Trafficking in Persons Protocol and reflected in the RDTC,²¹ while another group of Member States requested a more flexible approach, as reflected in the CRC and the FRDTC.²²

The current proposal seeks to align article 14 UDTC with the international legal framework on the protection of the rights of the child in respect to such material by including the wording “any person under eighteen years of age” at the end of the provision. It should be noted that in the context of the rules on CSAEM at the international level, article 2(c) OPSC²³ enshrines a similar prohibition as found in article 14 UDTC. The term “child” in this context, is not defined in the OPSC, for which the definition of the CRC applies. However, the Committee on the Rights of the Child has made it clear that the flexibility afforded to States Parties under article 1 CRC does not apply to the determination of the age up to which the offences set forth in the OPSC must be prohibited. Specifically, the Committee stated that:

“a child under the age of 18 can never consent to any form of their own sale, sexual exploitation or sexual abuse, and that States parties must criminalize all the offences covered by the Optional Protocol, committed against any child up to the age of 18. Any presumed consent of a child to exploitative or abusive sexual acts should be considered as null and void.”²⁴

The United Nations Children’s Fund (UNICEF) equally affirms that all crimes under the OPSC must be prohibited up until the age of 18 years.²⁵ Thus, while the CRC and OPSC afford States Parties the flexibility to deviate from the age of 18 in accordance with their domestic law to accord children rights, these instruments also oblige States Parties – for the purpose of the offences against children in general and against CSAEM in particular – to protect children up until 18 years of age. The same age threshold is found in the Trafficking in Persons Protocol, as well as in instruments that, inter alia, deal with the protection of children against abuse and exploitation at the regional level.²⁶

²⁰ United Nations, *Treaty Series*, vol. 2171, p. 227.

²¹ “‘Child’ shall mean any person under eighteen years of age.”

²² “‘Child’ shall mean every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.”

²³ “‘Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.’”

²⁴ Committee on the Rights of the Child, *Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (2019) [CRC/C/156](#), para. 72.

²⁵ See also UNICEF, *Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (2009) p. 11, footnote 39, for further references, available at: www.unicef.org/documents/handbook-optional-protocol-sale-children-child-prostitution-and-child-pornography.

²⁶ African Charter on the Rights and Welfare of the Child (art. 2: “For the purposes of this Charter, a child means every human being below the age of 18 years.”); Inter-American Convention on International Traffic in Minors (art.

Accordingly, the Chair’s proposal follows the approach under the CRC and the OPSC. It refrains from defining “child” in the Convention and thus leaves the definition to Member States’ domestic laws, in accordance with the CRC, while establishing a protection against the offences of CSAEM until the age of 18 years. A uniform age limit and the avoidance of differentiations based on a child’s age is important to maintain the presumption of minority in an approach that seeks to provide the highest level of protection for children. The lower the age limit, the more difficult it is for law enforcement officials to combat online CSAEM and the easier it is for offenders to claim lack of intent by arguing that the material depicts a person who *appears* older than the set age limit. The proposed definition of CSAEM would therefore ensure coherence at the international level and prevent the fragmentation and impediments to international cooperation in countering such offences.

The implications of a definition that hinges on an age limit similar to the CRC – made flexible for other purposes than criminal matters – may be illustrated by the following scenario: if a jurisdiction were to adopt an age of majority of 16 years, images described in paragraph 2 of article 14 depicting children of that age may be lawfully hosted on websites maintained on servers within that jurisdiction because the images would not fall within the definition of prohibited material. However, these websites could remain available globally, creating safe havens for CSAEM and leave those children between the lower age limit (whichever that limit would be in a given jurisdiction) and 18 years without protection. As a result, individuals responsible for producing, hosting, or otherwise making such material available would not be prosecuted in that State, which would also be under no obligation to provide mutual legal assistance or extradite offenders to other jurisdictions that have adopted the higher age limit of 18 years. Thus, in the absence of international cooperation, a lower age limit would also potentially prevent the latter group of States from investigating cases within their own jurisdiction.

For the purposes of the other instances where the term “child” occurs throughout the Convention, a concrete definition would not be required but could be left to the domestic law of States Parties.²⁷

Paragraph 3: Optional specifications of paragraph 2

Paragraph 3, which was included in the DTC as an optional provision to avoid the possibility of reservations and the associated obstacles to harmonization, has been retained unamended in the UDTC. This formulation aims to ensure clarity as to the obligations of States Parties while providing a leeway in implementing this article by limiting the definition of prohibited material under paragraph 2 to material with specific characteristics. At the concluding session, some Member States pointed out that, through the introduction of the definition elaborated in the informal consultations group 7, which defines “visual material” in mandatory and “written or audio content” in optional terms, subparagraph (b) had become redundant. Other Member States emphasized that they would require this provision for the flexibility it provides in their domestic law. The UDTC therefore has retained this provision as proposed in the FRDTC.

An alternative to allowing States Parties to make such clear specifications to the definition of CSAEM in paragraph 2 would be to explicitly provide for the possibility of States Parties to formulate reservations to the content of paragraph 2, in order to take into account the diversity of legal systems.

2(a): “‘Minor’ means any human being below the age of eighteen.”); Council of Europe Convention on Action against Trafficking in Human Beings (art. 4(d): “‘Child’ shall mean any person under the age of 18 years.”); Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (art. 3(a): “‘Child’ shall mean any person under the age of 18 years.”).

²⁷ See art. 15(3); art. 16(4); art. 21(7); art. 34(5); art. 53(3)(i).

This second approach was adopted in the context of the Council of Europe Convention on Cybercrime²⁸ ('Budapest Convention'), specifically in article 9, paragraph 4. However, it is the view of the Chair that such an approach would weaken the article as it could increase the number of reservations.

Paragraph 4: Exceptions

During the concluding session, a number of Member States proposed the deletion of paragraphs 4 and 5, while a majority called for their retention. Paragraph 4 of article 14 UDTC streamlines and slightly revises former paragraphs 4 and 5 of article 13 FRDTC.

Children shall not be punished for producing material depicting them or for the consensual possession thereof by them or their partners, in accordance with international human rights law, as emphasized by the Committee on the Rights of the Child, UNICEF and the Office of the High Commissioner for Human Rights. In its General Comment No. 25, the Committee on the Rights of the Child stated that "[s]elf-generated sexual material by children that they possess and/or share with their consent and solely for their own private use should not be criminalized".²⁹ Pertinent international obligations of States Parties to the CRC and the OPSC require such exceptions and, therefore, the UDTC follows the guidance of the Committee on the Rights of the Child by redrafting former paragraphs 4 and 5 of article 13 FRDTC.

Paragraph (a) includes the content of former paragraph 4, which allows for not applying this offence to children for self-generated material that depicts those children.³⁰ The limitation to material "as described in paragraph 2, subparagraphs (a) to (c)" has been deleted because children should also not be criminalized when they are coerced or tricked into producing material as described in paragraph 2, subparagraph (d).³¹

Paragraph (b) incorporates former paragraph 5 and contains an exemption of acts pertaining to material that is consensually produced, shared or maintained.³² Any material originating from consensual sexual activities should not be criminalized if it is maintained for the private use and with

²⁸ ETS No. 185.

²⁹ Committee on the Rights of the Child, *General Comment No. 25 on children's rights in relation to the digital environment* (2021) [CRC/C/GC/25](#), para. 118. See also UNICEF, *UNICEF submission* (1 August 2023), available at: www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Submissions/Multi-stakeholders/UNICEF.pdf p. 3 ("a child should not be held criminally liable for the generation, possession, or voluntary and consensual sharing of sexual content of him/herself, solely for his/her own private use").

³⁰ In this regard, the Committee on the Rights of the Child explicitly stated that it "is concerned that the self-generated aspect of such material could increase the risk that the child is considered responsible instead of being treated as a victim, and underscores that children should not be held criminally liable for producing images of themselves." See *Guidelines regarding the implementation of the OPSC*, para. 67. See also *UNICEF submission* p. 3, equally emphasizing the importance of retaining this paragraph.

³¹ Cf. *General Comment No. 25*, para. 81.

³² The Committee on the Rights of the Child has stated that the sharing of "sexual images, such as representations of their own sexual parts, either exclusively for themselves or to share with their boyfriends or girlfriends or a wider group of peers (often through 'sexting')" has to be distinguished from the criminal offence of "child pornography", and that "States Parties should not criminalize adolescents of similar ages for consensual sexual activity". See *Guidelines regarding the implementation of the OPSC*, paras. 67 and 72. The Office of the High Commissioner for Human Rights (OHCHR), also invoking the Committee on the Rights of the Child's Guidelines regarding the implementation of the OPSC, explicitly stated in its submission to the sixth session that paragraph 4 of article 13 DTC alone would be insufficient, as it "does not protect partners that consensually possess material, which is something that is protected under the Convention on the Rights of the Child." See OHCHR, *Submission of the Office of the United Nations High Commissioner for Human Rights* (2023) p. 4, available at: www.unodc.org/documents/Cybercrime/AdHocCommittee/6th_Session/Submissions/Multi-stakeholders/OHCHR1.pdf.

the consent of the persons involved. Paragraph (b) therefore serves as necessary complement to paragraph (a).

The reference to “conduct set forth in paragraph 1” aims to cover the different possibilities offered by ICT systems for the production, storage and transmission of electronic data. For instance, persons involved in the production of material depicting their partner, whether self-generated or co-produced, may also possess, control or access material stored on an ICT system or on a cloud, distribute or transmit it to another ICT system, solicit their partner to transmit it, display it, or otherwise engage in acts enumerated under paragraph 1, which consequently should be exempted as long as the material is maintained for the private use and with the consent of all persons involved. Any nonconsensual conduct under paragraph 1 that exposes the material to other persons would be punishable by article 14 or article 15, paragraph 3 UDTC.

The expression “legal age to engage in sexual activity under domestic law” has been replaced with “consensual sexual relationship, as determined by domestic law and consistent with applicable international obligations” to accommodate the pluralism of domestic legal systems.

The alternative to paragraphs 4 and 5 (article 13, paragraph 4-5 alt. FRDTC), has not been included in the UDTC. This compromise proposal made by two Member States was included in the FRDTC during the concluding session but was requested to be deleted by a large number of Member States, which called for the retention of original paragraphs 4 and 5.

Paragraph 5: Saving clause

Article 14, paragraph 5 UDTC reproduces article 13, paragraph 6 FRDTC. This provision was included in the FRDTC by the Chair at the suggestion of a Member State on the basis of article 41 CRC. It affirms that, where higher standards exist under the domestic law of a State Party, that Party is obliged to uphold those standards rather than applying the measures set out in the Convention.

Article 15. Solicitation or grooming for the purpose of committing a sexual offence against a child

Article 15 UDTC reproduces article 14 FRDTC. The updated draft text includes one editorial amendment to paragraph 4, which is intended to reflect the fact that, in legal terms, laws criminalize conduct rather than individuals. Accordingly, the wording “to exclude the criminalization of children for conduct described in paragraph 1”, as contained in the FRDTC has been amended in the UDTC to read “to exclude the criminalization of conduct as described in paragraph 1 of this article when committed by children”.

A similar technical amendment has been made in article 14, paragraph (a) UDTC, where the term “[c]onduct by” has been inserted before “children”.

Article 16. Non-consensual dissemination of intimate images

Article 16 UDTC reproduces article 15 FRDTC with the exception of paragraph 6, which has been removed and included in the Interpretative notes, as a note on article 16. At the concluding session, Member States discussed whether the object of this offence should be related to privacy or public morals.

During the concluding session, while a majority called for the retention of this provision as drafted in the RDTC, a number of Member States requested to change the title from “Non-consensual dissemination of intimate images” to “Dissemination of intimate images” as well as to include the proposed paragraph 5bis,³³ so as to broaden the scope of the provision. In an attempt to reach a compromise, the FRDTC included a reformulated version of paragraph 5bis as paragraph 6, which was opposed by a large number of Member States and supported by only a few.

The new interpretative note on article 16 seeks to reiterate the principle that the Convention, including its criminalization provisions, only sets minimum standards on prohibited conduct. Article 16, therefore, is to be read without prejudice to Member States’ liberty to establish, in accordance with their domestic law and consistent with their international obligations, other forms of dissemination of intimate images.

Article 17. Laundering of proceeds of crime

Article 17 UDTC reproduces article 16 FRDTC with some amendments. At the concluding session, a number of Member States expressed concern regarding the scope of article 16 RDTC as set out in its paragraph 2. Several Member States therefore proposed an additional paragraph 2bis.³⁴ In order to clearly define the scope of this provision, paragraphs 2 (a) and (b) of article 16 FRDTC were amended by inserting the expression “articles 6 to 15” to read “offences established in accordance with articles 6 to 15 of this Convention”. In the subsequent discussion of these provisions, the proposed paragraph 2bis was re-proposed in the concluding session as well as in the open-ended informal consultations held in Vienna from 15 to 17 April 2024. A number of Member States opposed this proposal as repetitive.

The UDTC therefore seeks to clarify the scope of paragraph 2(a) by replacing “include as predicate offence” with “establish as predicate offence”. In addition, an interpretative note on article 17 has been included in document A/AC.291/27, reflecting the content of the formerly proposed paragraph 2bis.

Furthermore, at the concluding session, a proposal of one Member State to allow States Parties to require “a certain degree of seriousness in respect of the offences described in this paragraph” was included as article 16, paragraph 2(c) FRDTC. During the discussion of the FRDTC, several Member States voiced concern about this provision. Consequently, the proponent of this subparagraph, in the spirit of compromise, showed considerable flexibility and withdrew the proposal, which is therefore not reproduced in the UDTC.

Article 21. Prosecution, adjudication and sanctions

Article 21 UDTC incorporates the amendments made in article 21 FRDTC, which were as follows:

In paragraph 4, the phrase “consistent with the obligations of the State Party under international human rights law” has been replaced by “consistent with the international obligations of the State Party” to ensure a more general reference to international law.

In paragraph 7, the term “applicable” has been inserted before “Protocols”.

³³ The proposal was: “Nothing in this article shall prejudice criminalization of the dissemination of intimate images under domestic law of States Parties”.

³⁴ The proposal was: “For the purposes of this Convention, an offence shall only be deemed an offence under this article when the predicate offence is an offence established in accordance with articles 6 to 15 of this Convention.”

Article 23. Scope of procedural measures

Article 23 UDTC reproduces article 23 FRDTC, with the addition of a new paragraph 4. Paragraph 4 clarifies that the powers and procedures, including the conditions and safeguards established under article 24 at the domestic level, apply to the provision of relevant forms of international cooperation. This addition only makes explicit what is tacitly intended by the Convention. In effect, the powers and procedures, and their correspondent conditions and safeguards, established at the domestic level in accordance with chapter IV, aim at enabling and facilitating international cooperation. A corresponding note has been included in the Interpretative notes, which further clarifies that the powers and procedures are applicable exclusively within the territory of each State Party.

Article 24. Conditions and safeguards

Article 24 UDTC incorporates the content of the Chair's proposal as contained in document A/AC.291/CRP.18. As the operational component of the conditions and human rights safeguards of the Convention, this provision requires States Parties to adopt legislation at the domestic level to provide for checks and balances on the powers and procedures established in accordance with chapter IV of the draft convention.

Paragraph 1 mandates that all actions of States Parties in the exercise of those powers and procedures are, in all phases, governed by the conditions and safeguards established under domestic law. These conditions and safeguards should provide for the protection of human rights consistent with the respective international obligations of each State Party. Specific reference is made to the principle of proportionality, which generally requires that the exercise of the powers and procedures under chapter IV be proportionate to the legitimate aim pursued, particularly that the limitation on the exercise of human rights shall not be more restrictive than required for the achievement of that aim. This principle, to be implemented in accordance with domestic law, is informed by the obligations of States Parties under applicable international and regional human rights instruments and related jurisprudence.

Paragraph 2 sets out a non-exhaustive list of conditions and safeguards that may be required, taking into account the circumstances and nature of the offence, as well as the intrusiveness of the powers and procedures envisaged. This determination will be made on the basis of principles of domestic law, informed by the applicable international obligations of the respective State Parties. The corresponding note included in the Interpretative notes further affirms that the review referred to in this provision is exercised by the domestic authorities of each respective State Party, strictly within its own territory, and does not create supervisory mechanisms at the international level.

Article 34. Assistance to and protection of victims

Article 34 UDTC reproduces article 34 FRDTC, in paragraph 2 of which the reference to "subject to its domestic law" was included, to clarify that domestic law governs the procedures of compensation and restitution for victims.

Article 35. General principles of international cooperation

Article 35 UDTC incorporates the Chair's proposal with some modifications.

Subparagraphs 1 (a) and 1 (b) correspond to the general scope of the Convention established under article 3, paragraph (a) on the prevention, investigation and prosecution of the criminal offences established in accordance with the Convention.

Subparagraph 1 (c) corresponds to article 3, paragraph (b) on the collection, obtaining, preservation and sharing of evidence in electronic form of any serious crime, including serious crimes established in accordance with other applicable United Nations conventions and protocols, in force at the time of adoption of the Convention. It should be noted that all serious crimes and related evidence in electronic form fall within the scope of this provision, regardless of whether they are committed through an ICT system or not.

Paragraph 2 specifies the provisions that govern the collection, obtaining, preservation and sharing of evidence in electronic form, that is, the relevant paragraphs set out in article 40 on general principles and procedures relating to mutual legal assistance, such as procedural requirements for a mutual legal assistance request and related grounds for refusal. The measures set out in articles 41 to 46 also govern the cooperation prescribed in paragraph 2.

Paragraph 3 reproduces the language of article 43, paragraph 2 UNCAC.

Furthermore, a note on article 35 has been included in the Interpretative notes. It clarifies that irrespective of the Convention, States Parties may afford one another any other forms of international cooperation in accordance with their domestic law or other sources of agreement.

Moreover, an interpretative note specifically clarifies the interpretation of the term “investigations” contained in articles 23 and 35. This term is to be interpreted broadly, meaning that it applies not only to situations where there are reasonable grounds to believe that a crime has been committed, but that it covers situations where the commission of a crime is imminent, as well as situations of continuous crime or series of crimes, where an investigation leads to stopping or impeding subsequent crimes from being committed.

Article 36. Protection of personal data

Article 36 UDTC reproduces article 36 FRDTC, which incorporated the proposal of the coordinator of the informal consultations that took place since the Ad Hoc Committee’s sixth session.

Article 37. Extradition

Article 37 UDTC reproduces article 37 FRDTC. With regard to article 37, paragraph 18, Member States were divided on whether or not to include an obligation for the requested State Party to provide reasons for refusing extradition, as provided for in the RDTC. As a compromise proposal, this obligation was changed in the FRDTC to an obligation to inform the requesting State Party of the reasons for refusal, “unless the requested State Party is prevented from doing so by its domestic law or its international legal obligations”.

Article 38. Transfer of sentenced persons

Article 38 UDTC reproduces article 38 FRDTC. In the FRDTC, the reference to “issues relating to consent, rehabilitation and reintegration” of sentenced persons was moved to a separate sentence, as a compromise proposal.

Article 40. General principles and procedures relating to mutual legal assistance

Article 40 UDTC reproduces all amendments made in the FRDTC, which were as follows:

The former paragraph 1 of article 40 DTC was reinstated as new paragraph 1 of article 40 FRDTC.

In paragraph 3, subparagraph (h) of article 40 FRDTC, which reproduced article 40, paragraph 2, subparagraph (h) RDTC, the term “evidence” has been included after “evidentiary items”, to clarify that evidence in electronic form is also covered by this article.

In paragraph 15 of article 40 FRDTC, (former paragraph 14 RDTC), in subparagraph (e), “country of origin of any person” was replaced by “nationality of any person concerned”. Moreover, the provision was extended to also include the “country of origin, description and location of any” item or accounts concerned. Subparagraph (f) was split into two parts: one concerning “Where applicable, the time period for which the evidence, information or other assistance is sought”; and the new subparagraph (g) on the “purpose for which the evidence, information or other assistance is sought”.

In paragraph 18, the term “victim” was added to broaden the range of persons whose hearing may take place via videoconference if appearance in person in the territory of the requesting party is not possible or desirable.

As a new addition, the UDTC includes paragraph 22, which incorporates the Chair’s proposal on article 40, paragraph 20bis.³⁵ This provision replicates the ground for refusal contained in article 37, paragraph 15, and gives States Parties discretion to not afford mutual legal assistance if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person’s characteristics. The inclusion of this ground for refusal in the UDTC seeks to strike a balance with the intrusive measures set out in the Convention, such as mutual legal assistance in the real-time collection of traffic data and mutual legal assistance in the interception of content data, which do not exist in other United Nations criminal justice instruments, as well as some other forms of international cooperation that may be provided directly through the 24/7 network, without the involvement of the judicial channel of formal mutual legal assistance.

Rationale for not including a political offence exception

The UDTC does not include an explicit ground for refusing mutual legal assistance on the basis that the request concerns a political offence for the following reasons:

First, unlike other conventions,³⁶ the UDTC does not contain a provision that declares that the offences established in accordance with the Convention shall not be considered as political offences or offences connected with such political offences, thus precluding the political offence exception. The omission of such a provision in the UDTC therefore affords requested States Parties the flexibility to refuse rendering mutual legal assistance on the grounds that their domestic law prohibits their authorities from carrying out the requested action, as provided for in article 40, paragraph 21(c).

Second, the envisaged scope of the Convention on the collection, obtaining, preservation and sharing of evidence in electronic form on serious crime is limited by article 6, paragraph 2 UDTC, which excludes conduct that may, inter alia, be politically motivated. Consequently, political offences would *de facto* not be covered by the Convention.

Article 41. 24/7 network

Article 41 UDTC reproduces all amendments made in article 41 FRDTC, which were as follows:

³⁵ See, following a similar approach, art. 15 of the International Convention for the Suppression of the Financing of Terrorism (United Nations, *Treaty Series*, vol. 2178, p. 197).

³⁶ See, for instance, art. 44(4) UNCAC or art. 11 of the International Convention for the Suppression of Terrorist Bombings (United Nations, *Treaty Series*, vol. 2149, p. 256).

In article 41, paragraph 1 FRDTC, the language contained in article 41, paragraph 1 DTC was reinstated at the request of several Member States. In the UDTC, the brackets around “as well as serious crimes” was removed, to reflect the scope of application contained in articles 3 and 35 UDTC.

In article 41, paragraph 3, on the measures of assistance to be provided, subparagraph (b) has been amended to require the requested State Party to preserve stored electronic data, “including, as appropriate, information about the location of the service provider, if known to the requested State Party, to assist the requesting State Party in making a request”. This addition addresses a particular problem faced by requesting authorities in obtaining electronic data whose location is unknown or cannot be determined due to the use of cloud computing or data migration across borders. Swift cooperation in the framework of the 24/7 network in providing information on the competent service providers that controls or possesses the electronic data sought is therefore crucial to direct the relevant requests under articles 42 to 46 to the correct State Party.

Article 42. International cooperation for the purpose of expedited preservation of stored electronic data

Article 42 UDTC retains all changes made to article 42 FRDTC, which were as follows:

The title “Expedited preservation of stored electronic data” was replaced by “International cooperation for the purpose of expedited preservation of stored electronic data” to distinguish this measure of international cooperation from the powers and procedures set out in chapter IV and other measures of mutual legal assistance under articles 44 to 46.

In addition, paragraph 2 has been added in line with the considerations of facilitating the determination of the location of electronic data and/or the service provider in control or possession thereof. This provision enables the requesting State Party to use the 24/7 network to obtain the necessary information before making a request to the correct State Party. Accordingly, the previous language contained in article 42, paragraph 1, article 44, paragraph 1, and article 45, paragraph 1 RDTC, on obtaining electronic data controlled or possessed by a service provider located or established in the requested State Party, has been deleted.

In paragraph 6, the grounds for refusal of mutual legal assistance contained in article 40, paragraph 21, were limited to subparagraphs (b) and (c). In the UDTC, a new reference to the non-discrimination provision under article 40, paragraph 22, has been included in article 42, paragraph 6 as an additional ground for refusal. Moreover, the expression “[i]n addition” has been added at the beginning of paragraph 6 for technical reasons, as paragraph 5 also contains a ground for refusing mutual legal assistance. Due to the centrality of this measure to the effective investigation and prosecution of criminal cases, only exceptional and serious grounds justifying the refusal could be invoked. Therefore, the assertion of any other grounds for refusing a request for preservation, besides those explicitly mentioned in paragraphs 5 and 6, would be precluded.

In paragraph 9 UDTC, the word “limit”, which had been used in earlier versions, has been corrected to “period”. This correction is due to the change to article 42, paragraph 7 RDTC, which introduced a minimum period of preservation instead of a maximum preservation limit, as established in the DTC.

Article 43. International cooperation for the purpose of expedited disclosure of preserved traffic data

Article 43 UDTC reproduces article 43 FRDTC, which included similar changes as those made in the title of article 42 and its paragraph 6.

Article 45. Mutual legal assistance in the real-time collection of traffic data;
Article 46. Mutual legal assistance in the interception of content data

At the concluding session, Member States' positions continued to diverge between employing the mandatory term "shall" or the optional term "may". In order to allow for the continuation of informal discussions after the session, articles 45 and 46 FRDTC did not specify whether these mutual assistance measures would be mandatory or optional.

Article 45, paragraphs 1 and 2, and article 46, paragraph 1 UDTC, now incorporate a proposal made by a Member State at the open-ended informal consultations held in Vienna in April 2024. Instead of opting for either mandatory or optional language, the proposed semi-mandatory language "shall endeavour to" seeks to offer a compromise. It requires that the requested State Party make a genuine effort to provide mutual legal assistance in the real-time collection of traffic data and the interception of content data, without prejudging the outcome of the internal review of the request and without obliging that Party to render mutual legal assistance in all circumstances.

Article 47. Law enforcement cooperation

Article 47 UDTC reproduces the amendment made to article 47, paragraph 1(a) FRDTC, namely the inclusion of the expression "taking into account existing channels, including those of the International Criminal Police Organization".

Article 48. Joint investigations

Article 48 UDTC incorporates one amendment that was requested by several Member States, which is the inclusion of a reference to "offences established in accordance with this Convention" in line with the overall approach taken throughout the Convention.

At the concluding session, the term "criminal" has been included in the FRDTC before "investigation", for consistency with articles 23, 41 and 42. Similar amendments were made in article 51.

Article 53. Preventive measures

Article 53 UDTC reproduces the amendments made in the FRDTC, with some additional modifications.

In article 53, paragraph 2 FRDTC, the qualifier "relevant" was added before "aspects" to tailor the involvement of the public in general to the prevention of cybercrime.

In paragraph 3, subparagraph (d), the term "preventive" has been deleted from the UDTC as several Member States deemed this term to be repetitive, given that the provision is located within the article and chapter on preventive measures.

Subparagraph (e) had already been introduced in the FRDTC and reflects the proposals of a number of Member States. It recognizes the important contribution that ethical hackers and security researchers make to maintaining the cybersecurity environment and preventing cybercrime through the legitimate activities of authorized penetration testing and vulnerability reporting. As some Member States expressed concern about this provision, the UDTC has included the additional caveat "and to the extent permitted by domestic law" to facilitate consensus.

Subparagraph (h) of article 53, paragraph 3 UDTC incorporates proposals made by Member States during the consideration of the FRDTC at the concluding session. In the first part of the subparagraph, and in order to facilitate consensus and alleviate concerns with regard to the meaning of the terms

“gender” and “persons in vulnerable situation”, the caveat “in accordance with domestic law” has been added. The expression “or is amplified by” has been deleted for simplicity, as it is inherent in the wording “occurs through”. Moreover, the term “information and communications technologies” has been changed to “an information and communications technology system”, as defined in article 2(a), to clearly define the scope of this provision. In the second part of the subparagraph, the addition of the conjunction “as well as” before “taking into account” establishes persons in vulnerable situations as a group to be generally considered “in developing preventive measures”, while at the same time allowing for an intersectional and conjunctive reading of persons in vulnerable situations as established in the second part of this provision with those affected by gender-based violence as established in the first part.

Subparagraph (i) of article 53, paragraph 3 UDTC reproduces the two changes that were incorporated in the FRDTC, which were proposed by several Member States to paragraph (h) RDTC, in order to attenuate the obligations contained in that provision: The expression “revising domestic legal frameworks and international agreements” was replaced with “revising domestic legal frameworks and enhancing international cooperation”, and “guarantee the immediate removal of child sexual abuse material” with “ensure the swift removal of child sexual abuse material”.

Subparagraph (k) retains the amendments made in the FRDTC, which replaced “publish and disseminate” with “and impart”.

Article 57. Conference of the States Parties to the Convention

Paragraph 7 addresses the involvement of stakeholders in a future mechanism for the review of the implementation of the Convention. During the concluding session, several Member States called for the deletion of the second part of article 57, paragraph 7 FRDTC,³⁷ which concerned the role of stakeholders to supplement information of the Conference of States Parties, while other Member States called for its retention.

In order to bring this provision closer to that of UNCAC, the proposed paragraph 7 of article 57 UDTC divides the corresponding provision contained in the FRDTC into two sentences and parts. The first part corresponds to article 63, paragraph 5 UNCAC, and allows the Conference of States Parties to “establish and administer such review mechanisms as it considers necessary” for the purpose of carrying out the tasks enumerated in article 57, paragraph 5. The purpose of such review mechanisms originally contained in the provision³⁸ has been deleted. Instead, the second part foresees that for the purpose of gathering information within the above-referred review mechanism, States Parties “shall endeavour to consult at the national level with relevant non-governmental organizations, civil society organizations, academic institutions and private sector entities”. Such consultation at the national level corresponds to paragraph 23 of the Procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.³⁹

³⁷ The second part of art. 57(7) FRDTC read “[...] as well as non-governmental organizations, civil society organizations, academic institutions”.

³⁸ Namely, “[...] to supplement the information provided by States Parties and received from relevant international and regional organizations to which they are a Party”.

³⁹ [Resolution 9/1](#) (2018) of the Conference of the Parties, entitled “Establishment of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”.

This proposal aims at achieving consensus by obliging States Parties to make genuine efforts to consult with stakeholders, without prejudging a decision of the Conference of the States Parties on the matter.

Article 63. Signature, ratification, acceptance, approval and accession

Paragraph 1 of article 63 UDTC reflects the standard option of opening the Convention for signature at United Nations Headquarters in New York *until* a date to be specified by the Committee. The option of opening the treaty for signature elsewhere was deleted. Member States may also wish to consider expressly including the date of opening for signature,⁴⁰ which would need to take into account the time of adoption of the Convention by the General Assembly, as well as the time needed for the depositary to finalize the preparation of the text before signature.

Draft General Assembly resolution

The revised draft resolution for consideration by the General Assembly, to which the draft text of the Convention will be annexed once approved by the Committee, contains some amendments to the previous version that was considered at the concluding session. These changes were made on the basis of the feedback received from delegations. The draft resolution prepared for the concluding session followed the structure and language of General Assembly resolutions 55/25, entitled “United Nations Convention against Transnational Organized Crime”, and 58/4, entitled “United Nations Convention Against Corruption”, each of which was submitted to the General Assembly by the respective Ad Hoc Committee with the respective draft convention annexed.

The title of the draft resolution has been aligned with that of the UDTC, that is, “United Nations Convention against Cybercrime (Crimes Committed through the Use of an Information and Communications Technology System)”.

In order to facilitate consensus, PP 4 of the revised draft resolution omits the reference to “crimes that affect the environment” to align the transnational organized crimes listed therein with those listed in PP 3 UDTC.

OP 5 of the revised draft resolution reflects OP 5bis of the Chair’s proposal. It provides that the Ad Hoc Committee shall continue its work to elaborate a draft protocol “supplementary to the Convention, addressing, *inter alia*, additional criminal offences as appropriate”. The original proposal of the Chair has been amended to include a more flexible, yet expeditious, timeframe for convening the two negotiating sessions in Vienna and New York. That timeframe is now linked to the date of the adoption of the Convention by the General Assembly, rather than to pre-determined years. The addition of this paragraph would be necessary to allow time for the discussion of the proposals submitted by several Member States, in particular under the chapters of criminalization, procedural measures and international cooperation. Since the sixth session, following the recommendation of many Member States, the Chair focused the limited time of the Ad Hoc Committee on finalizing the key provisions of the Convention. Accordingly, the proposals received during and after the sixth session have not been discussed in detail. Therefore, the Chair would propose that the Ad Hoc Committee turn to the above-mentioned proposals and devote time to their discussion, using the same

⁴⁰ “This Convention shall be open to all States for signature at United Nations Headquarters in New York from [*date*] until [*date*]”.

rules and modalities of work to ensure an open, inclusive and transparent approach, after finalizing the Convention with its key elements.

Without pre-judging the result of such discussion, the paragraph provides that any outcome would be presented to the Conference of the States Parties, for its consideration and further action.

OP 6 reproduces former OP 5, with the addition that the duration and location of the session to be convened for the preparation of the rules of procedure of the Conference of the States Parties have been set as “up to five days in Vienna”.

OP 10 (former OP 8bis) includes a mandate of the Secretary-General to report on the activities undertaken to promote the rapid entry into force of the Convention in order to keep the General Assembly seized of the topic and to foster action by Member States towards becoming Parties to the new treaty.

OP 11 (former OP 9) provides for the designation of an International Anti-Cybercrime Day, the date of which would be determined by Member States and approved by the General Assembly.
