

Statement by
H.E. Ambassador Mohamed ElMolla
Head of the Delegation of the Arab Republic of Egypt at the
Concluding Session of the Ad-Hoc Committee on the Elaboration of a
Draft Convention on the Use of Information and Communication
Technologies for Criminal Purposes

Madam Chair,

Distinguished representatives of the member states of the Ad-Hoc committee,

Dear Colleagues,

At the outset, I would like to express my heartfelt congratulations to all members of the Ad Hoc Committee for the conclusion of our work and for reaching a final version of a UN convention against cybercrime.

I must also express my gratitude and appreciation to our distinguished and able Chair, H.E. Ambassador Fawzia Mubarki, for her tireless efforts, her patience, and her wise leadership which have steered us through a years-long process towards a successful conclusion. My thanks go also to Mr. Tahir Mohdeb for his dedication to the success of this process.

I would also like to thank the secretariat for their dedication and commitment to this process. They have been essential to ensuring the success of our endeavors and their important input has left its mark on this important convention.

My special thanks go also my dear colleague Taher Mohdeb for his relentless efforts through the process.

Excellencies and dear colleagues,

Cyberspace is indispensable. Virtually every aspect of our lives is dependent on cyberspace. The global economy, the international trade system, banking and financial services, global telecommunications,

energy production, air and maritime transport, health services, and the entertainment industry are all dependent on information and communication technologies. Therefore, combating the use of information and communication technologies for criminal purposes and ensuring that cyberspace is a safe and secure domain is a core interest to all states and societies.

This is why Egypt has been actively engaged in the process of elaborating this UN convention on cybercrime. Egypt is committed to ensuring that information and communication technologies are not used as instruments of crime, and to promote international cooperation in the area of crime prevention in cyberspace.

Generally, while Egypt is prepared to accept this convention, we have concerns regarding several of its provisions. We believe that with further flexibility and a greater measure of openness to address the priorities and interests of all states, this convention could have been adopted without a vote and with the full support of all states.

Accordingly, I would like to read the following statement that outlines the principal concerns of the Government of Egypt and places on the record our understanding of the object, purpose, or legal effect of some of the provisions in this convention.

On the question of the provisions relating to human rights, Egypt reaffirms that it is unwaveringly committed to upholding its obligations pursuant to international human rights law instruments to which it is bound.

However, Egypt observes that unlike other instruments relating to crime prevention, such as UNCAC and UNTOC, the present convention on cybercrime has dedicated several provisions on the question of human rights. Although inconsistent with the technical nature of crime prevention conventions, we accepted the principle of including provisions on the promotion and protection of human rights while combating cybercrime, including the preamble, articles 6(1), 36, and 37, which have sufficient grounds to address questions of human rights.

As relates to article 6(2), Egypt wishes to make the following observations:

First, article 6(2) was phrased in an unjustifiably selective manner that fails to take account the fact that all human rights are universal, indivisible, interdependent, interrelated, and mutually reinforcing. Indeed, there are many human rights the enjoyment of which could be affected by cybercrime, but which are not mentioned in this provision. This provision disregards that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis.

Second, article 6(2) is also phrased in a manner that fails to reflect the balance struck in the ICCPR between, on one hand, basic human rights and fundamental freedoms and, on the other hand, duties and responsibilities that apply concurrently with the exercise of these rights and freedoms. In particular, the exercise of some of the rights listed in article 6(2) is subject to restrictions stipulated in the ICCPR and other relevant instruments for the protection of the rights and reputations of others and public order and national security and to prevent incitement to national, racial or religious hatred, discrimination, hostility or violence.

For these reasons, Egypt has opted not to vote in favor of article 6(2).

On article 14 and article 16, Egypt reiterates the following:

First, we are concerned that articles 14 and 16 have been phrased in a manner that does not adequately take into account the cultural, social, and religious diversity of the world. It ignores the reality that for some societies consent neither justifies nor legitimizes certain forms of behavior – especially those that relate to sexual conduct – that are harmful, offensive, or that amount to an affront to the interests and norms of the community. Given the interconnected and borderless nature of the internet, these articles risk globalizing forms of conduct that relate to sexuality that are offensive and inappropriate in certain cultures and religions.

Second, on article 14, I wish to reiterate that we are committed to a zero-tolerance policy towards all forms of child sexual exploitation or abuse. We are also concerned that the terms of article 14 may be misinterpreted to permit the production and dissemination of material of a sexual nature involving children or that prejudices existing obligations under the Convention on the Rights of the Child. For these reasons, Egypt did not vote in favor of this provision.

Third, on article 16, Egypt notes that for many societies, there is no minimum age of consent to engage in sexual relations. Rather, social norms and established law have set a minimum age of marriage and prohibit the dissemination of images of an intimate nature. These rules are ultimately intended to serve a noble cause, which is the protection of the reputations of others and to protect the integrity of the family. This was the consideration that impelled Egypt to propose the addition of paragraph 6 of article 16, which relates to the need to prioritizing the application of domestic law. As a result of the addition of this paragraph, Egypt decided not to oppose this provision, and instead abstained from the vote.

On article 24, Egypt wishes to place the following concerns on record.

For Egypt, this provision has been the most problematic throughout the negotiation process, as it affects a core manifestation of state sovereignty, which is the administration of justice and the upholding of the rule of law. We noted with concern that, despite the sensitivity of this provision, some of its elements were lifted – almost verbatim – from regional instruments to which a majority of UN member states are not parties.

Specifically, article 24(2) relates to many of the fundamental functions of the judicial system, which are part of the essence of the reserved domain of state sovereignty. These functions include the provision of effective remedy, the exercise of judicial review, grounds justifying application, and limitations on the scope and duration of such powers or procedures. In this regard, we are especially concerned that Article 24 might be misinterpreted to invite foreign scrutiny of domestic judicial processes.

Egypt also notes that Article 24(4) should not be read or applied in a manner that holds international cooperation hostage to the political whims or discretion of other state parties. Mutual legal assistance is an essential prerequisite for the success of this convention and is one of the principal considerations that incentivize states to accede to this convention.

It is this potential misinterpretation of Articles 24(2) and 24(4) in a manner that infringes on state sovereignty and that imposes unprecedented restrictions on international cooperation that led Egypt to vote against Article 24.

In this regard, Egypt affirms that its interpretation of Article 24 is that it does not permit any form of foreign oversight over any aspect of the administration of justice domestically, including by any review mechanism or bodies that may be established in the future or by other state parties. Generally, Egypt reads Article 24(5) as a general provision that governs the application and interpretation of the other elements of article 24.

The final provision that Egypt wishes to address is article 40(22).

Overall, Egypt underscores that article 40 has instituted a robust and complex regime for mutual legal assistance, which, as I noted, is an essential component of this convention. However, some portions of this article are imperfect, and may even undermine its object and purpose. In particular, Egypt is concerned about article 40(22). The terms and phrasing of this provision grants state parties an unjustifiably broad margin of appreciation to exercise their discretion to choose not to honor a request for mutual legal assistance. In our view, this provision is superfluous and provides a backdoor for states to release themselves of their obligation to honor requests for mutual legal assistance. This broad and unjustified discretion risks emptying the provision on international cooperation of their value and utility.

This is why Egypt has opted to vote against this provision.

In conclusion, Madam Chair and distinguished colleagues, we have endeavored to achieve consensus on every provision of this convention. However, we were unable to overcome the divergences of views on some of the most contentious provisions. Our concern is that some of these unresolved matters may delay the entry into force of this convention or may lead some states to deposit reservations that could weaken the effectiveness of this convention.

We are hopeful that the conference of states parties will address these concerns through resolutions and additional protocols that further enhance international efforts to prevent and combat criminal conduct in cyberspace.