Co-Facilitators Report
Informal Group A – Criminalization Clusters 3, 4 and 6
Delivered at
The Fifth Session of the Ad Hoc Committee to Elaborate a Comprehensive
International Convention on Countering the Use of Information and
Communications Technologies for Criminal Purposes
21 April 2023, Vienna

Madame Chair,

At the outset, the co-facilitators, Ms. Briony Daley Whitworth (Director, Cyber and Tech Multilateral Engagement, Ministry of Foreign Affairs of Australia, and Vice-Chair of the Ad Hoc Committee) and Ms. Platima Atthakor (Head of Human Security Section, Department of International Organizations, Ministry of Foreign Affairs of Thailand) would like to thank you, Madame Chair, for entrusting us with the task of co-facilitating informal negotiations of Group A on Criminalization covering Clusters 3, 4 and 6 of the Criminalization Chapter: namely, Article 15 on Violation of personal information; Article 16 on Identity-related offences; Article 17 on Infringement of copyright; Article 22 on Involvement of minors in the commission of illegal acts; and Article 23 on Encouragement of or coercion to suicide.

To recap, the work of Group A started at the fourth session of the Ad Hoc Committee (January 2023, Vienna). During the fourth session, Group A held three open informal consultations in hybrid format with Member States and one online meeting with multi-stakeholders. No bilateral consultations were conducted during that session. Member States shared their comments and positions, including suggested textual amendments and proposals. The co-facilitators of Group A delivered our report to the Plenary on the last day of the fourth session of Ad Hoc Committee. That report and the working document of Group A, reflecting Member States’ positions and proposals, were uploaded to the AHC website.

Reporting to the fourth session of the Ad Hoc Committee, the co-facilitators invited Member States to reach out to us should they be interested in holding online bilateral sessions during the intersessional period before the fifth session. No country reached out for such a bilateral.

During the intersessional period, the co-facilitators also attempted to work on “alternate co-facilitators’ text”, which would have no formal status, and to bring that proposed text forward for Member States’ consideration at Group A informal sessions during the fifth session of the Ad Hoc Committee.
Due to the considerable divergent positions of States to the provisions under the consideration of Group A, including the numerous textual proposals in the rest of the Consolidated Negotiating Document (CND) post-AHC4 to which the co-facilitators had hoped to suggest incorporation of a “new proposed text”, the co-facilitators were unable to provide an alternate co-facilitators’ text.

To find a way forward and to better understand and receive further details and views from the most engaged States, the co-facilitators conducted bilateral meetings during the first week of the fifth session of the Ad Hoc Committee.

At this fifth session, a total of 11 bilateral meetings, including one with a regional group, and two informal open sessions took place. Open informal meetings were convened in hybrid format at 1.30 pm during the lunch intermission on Friday, 14 April and Tuesday, 18 April 2023.

During the bilateral consultations and at the open informal sessions, the co-facilitators also shared “a possible way forward” with regard to the provisions under consideration, and opened the floor for States to provide further comments, inputs or any suggestions. The co-facilitators also encouraged any interested States to send comments via email or reach out to us at any time during the fifth session. Member States constructively engaged during the bilateral and open informal meetings.

Group A did not reach consensus on the provisions before us, but there have been some positive developments.

**On Cluster 3, Articles 15 and 16:** At the informal meetings at the fourth session, some States proposed deleting these Articles, while some States consider the inclusion of these Articles very important. During the informal meeting of Group A during the fifth session on 14 April 2023, the co-facilitators proposed States to consider whether they would be receptive to having some elements from both Articles 15 and 16 merged into Clusters 1 and 2 of the Criminalization Chapter, more specifically Articles 10 on Misuse of devices and programs and 12 on [Computer-related][Information and Communications Technology-related] fraud, which are being considered in plenary. A number of States, who had originally proposed the deletion of Articles 15 and 16, responded with positive feedback with a view to considering such possibility, depending on how the merging would finally turn out.

Some States stressed the need to continue to have a stand-alone provision with regard to Article 15 on violation of personal information in the new Convention, and expressed flexibility with regard to the modification of the language.
A number of States, while expressing flexibility in considering the merge of both Articles 15 and 16 into Clusters 1 and 2, pointed out that the inclusion into the text being discussed in plenary could create more complications and difficulty in achieving consensus with regard to the respective Articles 10 and 12.

Regarding **Cluster 4, Article 17**, there remained a broad diversity of positions. Some States remained in favour of deleting this Article from the Convention, while some States consider the inclusion of this Article very important. Of those States advocating for the inclusion of the Article, many had proposed changes, additions, and amendments to the Article. However, these changes, additions and amendments did not align with each other and could not be reconciled between each other. Of the States advocating for deletion, some States noted that, while they preferred not to include the Article, they held significant concerns about the proposals to change, amend, or add to the Article.

The Group did not reach agreement on a way forward on Cluster 4 Article 17. The co-facilitators’ impression is that this Article remains contested, and its inclusion in the Convention does not garner broad support. However, the co-facilitators believe that should this Article be taken forward in our discussions, the original wording of the Article, as per the Consolidated Negotiating Document (A/AC.291/16) of 7 November 2022, is less objectionable to Member States than the various amended versions of the Article set out in the Group’s working document.

Regarding **Cluster 6, Article 22**, there remained a broad diversity of positions. Some States remained in favour of deleting this Article, while some States consider the inclusion of this Article very important. The co-facilitators suggested at the informal meeting on 14 April 2023 that a potential way forward might be to take the essential elements from this Article, that is, the involvement of minors in the commission of the offences covered by this Convention, and insert them into a separate Article on aggravating circumstances. The co-facilitators noted that this proposal was not uncontroversial, as debate remained open in plenary regarding the appropriateness of including any reference to aggravating circumstances in the Convention. At the informal meeting on 18 April 2023, Member States remained divided on this Article, and the Group did not reach agreement on its inclusion or exclusion or amendment.

Regarding **Cluster 6, Article 23**, there remained broad diversity of positions. Some States remained in favour of deleting this Article, while some States consider the inclusion of this Article very important. Some States in favour of retaining the Article made proposals to amend the Article. Some of these proposals garnered
the support of some States; these proposals were also objected to by some States. The Group did not reach agreement on a way forward for this Article. However, it is the co-facilitators’ impression that an article with a higher threshold of criminality may garner a little more support than the Article as drafted in the Consolidated Negotiating Document (A/AC.291/16) of 7 November 2022. The co-facilitators recommend that, should this Article remain under consideration by the Ad Hoc Committee, the Article be amended to require the higher threshold of ‘coercion to suicide’, as less objectionable to more Member States, than the lower threshold of ‘encouragement to suicide’.

Finally, the co-facilitators note the work of Informal Group B, focused upon Clusters 8 and 9 and co-facilitated by H.E. Mohamed Hamdy Elmolla, Ambassador and Permanent Representative of Egypt to the United Nations, Vienna, and Vice-Chair of the Ad Hoc Committee, and H.E. Engelbert Theuermann, Cyber Ambassador, Federal Ministry for European and International Affairs of Austria. The co-facilitators of Group A noted that, should a solution be adopted for the offences under consideration by Group B, including, for example, creating a separate provision that recognises the [cyber]/[ICT] elements of offences criminalized under other international instruments, this solution may also be appropriate for the offences in Clusters 4 and 6 of informal Group A.

The co-facilitators of Group A also consulted with the co-facilitators of Group B, and as well as jointly consulted with the Chair, and came to the agreement that for both Groups, no textual proposals would be provided by the co-facilitators of the Groups. We would report the situation as we see it and advise the Chair accordingly for her consideration on how to move forward with these respective provisions in the draft text of the Convention to be considered at the sixth session of the Ad Hoc Committee.

The co-facilitators’ impressions and recommendations set out in this report have no formal status. The co-facilitators submit this report to the Chair and the Ad Hoc Committee for consideration, and extend our thanks and appreciation to all Member States in particular for their constructive, positive, and meaningful engagement and participation in the work of Group A.

Thank you, Chair.