Co Facilitators Report
Informal Group B – Criminalization Clusters 8 and 9
delivered at the 5th Session of the AHC
21 April 2023, Vienna

- On behalf of H.E. Ambassador Mohamed El Molla and myself, I have the honor to provide a short report on the work of Group B during the 5th session of the AHC.

- Group B was mandated to discuss clusters 8 and 9 of chapter II on criminalization of the Consolidated Negotiating Document. In addition to the four open-ended meetings during the fourth session, the Group convened three open informal meetings during the current session on 13, 19 and 20 April. The co-facilitators held again several bilateral meetings with interested delegations. We would like to thank all delegations for their important and active contributions and readiness to explore possible solutions to be considered by the Chair.

- As agreed in the methodology for the work of the AHC, the aim of the work of this informal group was to better understand the different views of Member States and to identify and explore possible options for compromise with a view to overcoming divergences. Let me try to give a factual summary of the discussions which were held in a very constructive atmosphere.

- The discussions during this session were based on the „Overview of written proposals submitted for Group B“ during the 4th session, which contains all the proposals made during the last session (circulated to all delegations and on the AHC website), both regarding specific text proposals for cluster 8&9 and regarding a possible more general way forward; as well as the Oral Report submitted by us at the end of the 4th session. This Oral Report included, i.a., several elements for further consideration, namely
  - To include a provision on the possibility of future Protocols to the Convention
  - The possibility of including the concept of serious crimes, as utilized in the UN Convention against Transnational Organized Crime, within the scope of the Convention
  - The possibility of including a reference in the preamble to certain forms of crime
  - The extension of cooperation regarding the sharing of electronic evidence beyond the crimes listed in chapter II.
A considerable amount of our time was spent on discussing proposals and elements for a possible way forward to overcome existing divisions. In addition to the proposals submitted by Mexico and South Africa already at the 4th session, Brazil made a new proposal for the inclusion of a provision in the future Convention that States Parties shall review and adapt their national criminal legislation beyond the scope of Chapter II, when the use of digital technologies fundamentally affects the scale, reach and nature of such crimes. This proposal is included in the revised „Overview of written proposals submitted for Group B“. Different views were expressed on these proposals.

Very diverging views were expressed by delegations on the provisions and proposals regarding clusters 8 & 9. While some delegations stressed the importance of including all or at least some of the provisions contained in those clusters in the future Convention, other delegations requested again their deletion. We, therefore, have to inform the AHC that we continue to have firmly opposing views on the inclusion or non-inclusion of these two clusters with no consensus thus far.

All delegations showed readiness to further explore the different proposals with the aim of finding consensus, while preserving their positions on these clusters, taking also into account the solution to be found on other key elements of the Convention.

While the discussions clearly showed that fundamental differences persist, we remain optimistic about the potential for reaching a compromise building upon the different proposals made. We would like to thank the Chair for entrusting us with this task and would like to thank all delegations for their active participation and important contributions to our work.