

Report from Working Group C

Thank you, Madam Chair,

I am pleased to inform the committee that Group C has held eight meetings, the latest on April 20th.

Several terms and definitions were proposed and discussed. Similar to other Working Groups, Group C did not reach consensus on a set of terms to be defined nor their definitions.

The terms that were mentioned are:

- Computer System
- Information e Communications Technology Device
- Information e Communications Technologies
- Information and Communications Networks
- Computer data
- Electronic information
- Content data
- Traffic data
- Subscriber data
- Electronic evidence
- Service provider
- Personal information/data

- Digital Technology Device
- Information System
- Harm and,
- Elements to be considered for defining Information and communications technologies

The discussions resulted in a document that reflects all opinions expressed during the meetings.

In order to facilitate further discussions, the co-facilitators introduced a proposal of a set of terms and definitions that was not discussed but is left as basis for future discussions on methodology. The proposal is open should delegations want to add something, when conversations are resumed.

We note that there was broad consensus about the need for the discussions on terminology to continue along with the development of the text of the convention.

To conclude, the co-facilitators thank the Chair for her trust and confidence, as well as the support of delegations, who contributed with their presence, concrete proposals and comments.

Explanation of co-facilitator's proposal

- Group did not reach a consensus;
- Need to present something concrete, article 2 has to be in the convention;
- Co-facilitators listened to delegations, document is in the website. The text is transparent and accurately reflects the discussions;
- Not a consensual or compromise document;

- We understand countries are not yet ready to be engage in deeper negotiations, our intention is to offer some basis for discussion;
- Attempt by the co-facilitators to start a process of reconciling positions that are, at this point very distant;
- Based on the agreement at the beginning. We are trying to bring inputs for countries to negotiate
- We request countries look into the proposal with an open mind and we are not looking today for support of rejection of the proposal;
- We suggest countries look into it, take it back to capital, think about the implications, but also remember the need to bridge gaps, if we want to have a convention that is inclusive and can be universally adopted, like UNCAC, UNTOC;
- We also found that presenting this document to this group, before taking it to the Plenary or to the Chair, would be an exercise of fairness and transparency, which is what we need in this negotiations.

Article 2. Use of terms

For the purposes of this Convention:

Important. The terms included are for the purposes of this Convention. It also implies that we are not tasked to produce a scientific or academic terminology. Terminology in the convention is for the use and the purposes of criminalisation, domestic legal measures and international cooperation.

- (a) “ICT device” shall mean an assemblage or grouping of technical components designed for automatic processing of electronic information used to communicate and to create, disseminate and manage information;

Need to define it. It is in the resolution that gives the mandate to this committee. Not only that, but many countries use this term, and it means that to have a convention that is inclusive and comprehensive it is necessary to define it and to include it in the convention.

It is also important to notice that, increasingly, the activities performed on the cyberspace are being defined by the use of Information and communication technologies.

You may notice that we brought together distinct proposals for the term.

(b) "Computer system" shall mean any device or group of interconnected or interrelated devices, including ICT devices, one or more of which, pursuant to a program, performs automatic processing, storage and transfer of data;

Also need to define it. The first thing you can notice is that we took a definition that gathered ample support and we included ICT devices. Please don't be shocked!

We made this because "computer system" is a term that has been used for many decades, even before the existence of the Budapest Convention. Before the invention of the internet, of local and global networks, there were computer systems. It is a term that is widely used by countries and that is well understood.

So, in defining computer system and including "ICT Devices", we are not saying that conceptually one is more comprehensive than the other.

We listened attentively to the discussions, and we noticed that in this matter also there are opposing views. Some argue that the concept of computer systems is broader, others say that the concept of Information and communication technologies is broader. We are not getting into this discussion but acknowledging that one has been used longer than the other, but, mainly, that both must be mentioned in the convention in a way that can find consensus, even if we need to be a bit ambiguous, while still keeping the applicability of the convention for practitioners.

What we are offering, then, is a possibility for relating both terms, while allowing both to be usable.

(c) *“Computer data”* shall mean information or concepts in a form suitable for processing, that is stored and transmitted with the use of computer systems;

Going on, throughout the definitions, you will also notice that we made a choice of using “data” or “information” in a way that respects common usage, but also trying to articulate both. Experts and practitioners we talked to tell us that, in practice, it does not actually matter which one is used when investigating and prosecuting crime, but we also intended to keep a view of information as being formed by bits of data.

Here you can see we articulate computer data with the concept of computer systems, that, according to our proposal, includes ICT devices.

(d) *“Traffic data”* shall mean data collected by a service provider, excluding content data, related to:

(a) the type of service provided and its duration where it concerns technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password, that are provided by a user, or created at the request of a user;

(b) the commencement and termination of a user access session to a service, such as the date and time of use, or the log on to, and log out from the service; and

(c) communications metadata as processed in an electronic communications network for the purposes of transmitting, distributing or exchanging content data, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment used in the context of providing communications services, and the date, time, duration and the type of communication.

For traffic data, we chose to keep the definition of the UNODC Model Law on Legal Cooperation with some amendments, after listening to the room. We deleted, for instance, the mentioning of “in the normal course of business”.

We also chose to keep most of the definition from the Model Law because we found that this definition would give more elements for practitioners to understand what kind of information they need to gather when requesting or providing traffic data information.

- (e) “Content information” shall mean data relating to a communication by means of a computer system concerning the substance or purport of that communication, such as text, voice messages, audio recording, video recording as well as other types of information.

As for content information, we understand that it is not yet decided if the exchange of this kind of information will be included in the scope of the convention, but we thought that it could even help the discussion as to include it or not, if we have an idea about what “content information” means.

- (f) “Subscriber information” shall mean any data held by a service provider relating to subscribers of its services other than traffic or content data and by which can be established:
 - (a) the type of service, the technical provisions applied thereto, the period of service;
 - (b) the subscriber’s identity, postal or geographic addresses, telephone and other access numbers including IP addresses and billing and payment information available on the basis of the service agreement or arrangement as well as other information allowing to identify the user;
 - (c) information relating to the location of information and communications equipment available on the basis of the service agreement or arrangement.

For “Subscriber information” we also sought to articulate information and data. We simplified the language to what seems to be the key aspects of this kind of information

(g) *“Service provider” shall mean:*

- i. any public or private entity that provides to users of its service the ability to communicate by means of a computer system, and
- ii. any other entity that processes or stores computer data on behalf of such communication service or users of such service.

In the case of “Service provider” we listened to some opinions that requested that we keep the language of the Budapest Convention (Article 1, letter c)

(h) *“Personal information” shall mean data relating to an identified or identifiable natural person.*

Lastly, “Personal information” as the set of several bits of data that allow for the identification of an individual.

To end, I wish to recall that the work of terminology is ongoing and that we need to work on finding common ground for having terminology that is consensual and practical for the purposes of the convention.