

**SIXTH SESSION OF THE AD HOC COMMITTEE TO ELABORATE A COMPREHENSIVE  
INTERNATIONAL CONVENTION ON COUNTERING THE USE OF INFORMATION AND  
COMMUNICATIONS TECHNOLOGY FOR CRIMINAL PURPOSES**

**CO-CHAIRS REPORT TO THE PLENARY  
REPORT TO THE PLENARY ON GROUP 4 INFORMAL OPEN ENDED CONSULTATIONS**

**UNITED NATIONS HEADQUARTERS**

**SEPTEMBER 1, 2023**

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Good afternoon distinguished delegates of the Ad Hoc Committee, this report from the Co-Chairs is to advise the plenary of the activities which took place in the parallel informal open-ended consultations.

The Chair tasked myself and Briony to find a sustainable solution to harmonize the various views which states had on the articles in group 4. These articles were article 3 Scope of Application, article 23 scope of procedural measures, article 35 general principles of international cooperation, article 17 offences relating to other international treaties and article 61 relation with protocols.

[8 sessions] of informal consultations were convened, beginning on August 23, 2023, during which Member States were given the opportunity to analyse the relevant articles in detail and share their views, fully recognizing the interrelated nature of the articles. This approach was geared towards ascertaining the primary interests of member states in a granular way. It was observed that bypassing this process and going directly to textual amendments would not solve the underlining differences shared by states. As a result of this process, we received a lot of proposals from members states on all articles except article 61 which the informal group agreed to retransmit to the plenary for consideration and adoption ad referendum.

After each informal session, the rolling text was sent to the emails of registered members and uploaded to the Ad Hoc Committee website to ensure the parallel negotiations lent itself to the

principle of transparency which member states agreed was a founding principle of how we engage in these proceedings. The co-chairs were mindful of small delegations and the issues which may arise of following concurrent discussions in both plenary and informal sessions.

From the interventions received from states, the following issues were identified:

1. Whether article 17 is a criminalizing provision establishing offences by reference to other treaties in the draft convention – and the impact this interpretation might have on the scope of the convention, morphing it into a general crimes convention and thereby making other UN conventions criminalizing conduct redundant
2. Whether article 17 is a provision exclusively on scope which would apply to the full suite of procedural powers and international cooperation
3. Whether the treaty adds value if it limits the procedural measures and international cooperation to articles 6-16 of the convention
4. Whether, if the scope is widened from the compromise proposed in the Convention Draft Text, additional safeguards are necessary to exclude certain conduct which ought not to be criminalized
5. What offences ought to be available to international cooperation under this convention: offences in the convention, serious crimes, or any offence committed with the use of ICTS.

Other issues were raised generating discussion on the following themes: criminalization, scope of application, international cooperation, safeguards for the procedural measures. Of note, the co-chairs observed that a fundamental issue among states was how and to what extent international cooperation mechanisms could be used to assist states in engaging each other with a view to combatting cybercrime or the use of ICTs for criminal purposes.

After this process, the co-chairs proposed new text on articles 3, 17, 23 and 35. The proposal was based on the understanding that while article 17 was crafted to be a bridge to incorporate

other international conventions not referenced in the convention, to allow states to implement procedural powers domestically, the issue many states wanted Article 17 to also address was international cooperation for crimes not listed in Articles 6-16. To this end, it was observed that the true issue as expressed by a significant amount of member states was a matter of scope and not criminalization. To solve this impasse, article 17 was proposed by the co-chairs to be deleted and the contents therein reflected in article 3(2) and article 35(1)(b) respectively to address the issue of scope of offences these chapters of the convention would apply to. The co-chair's proposal is reflected on the screen for your attention.

**[I will hand over to my co-chair Briony to explain the proposal.]**

Article 3:

In paragraph 1, the reference to “articles 6 to 16” has been deleted. This deletion is contingent upon Article 17 also being deleted from Chapter II *Criminalisation*. The deletion of article 17 from Chapter II removes ambiguity around what is referred to by the phrase “offences established in accordance with this Convention”. Only those offences elaborated in Chapter II – which, under this proposal, would *not* include article 17 – would be included in the reference to “offences established under this convention”. So paragraph 1 would mean that the convention applies to the prevention, investigation and prosecution of the offences established in accordance with this convention in Chapter II.

In paragraph 2, the informal heard several states express discomfort with the ambiguity of the reference to “relevant articles of this convention.” The co-chairs propose to add specificity to this reference, so that the convention would apply to the collecting, obtaining, preserving and sharing of electronic evidence for:

- Offences established in accordance with this convention (that is, Chapter II offences, on the basis that Article 17 is deleted from Chapter II)
- [criminal] offences with a penalty of three years or more, and

- [criminal] offences established in accordance with United Nations conventions and protocols, with a penalty of three years or more, when committed through the use of a computer system / ICT device.

The co-chair's proposal deletes Article 17 and moves its operative substance into article 3 and article 35.

#### Article 23:

In paragraph 1, the word specific has been included, in square brackets.

In paragraph 2(a), the reference to "articles 6 to 16" has been deleted, so that scope of procedural measures would apply to criminal offences established in accordance with this Convention (that is, Chapter II offences, on the basis that Article 17 is deleted from Chapter II).

The remainder of Article 23 is retained as drafted in the Draft Convention Text.

#### Article 35:

The cochair's proposal reformats article 35 to split paragraph 1 into two subparagraphs. Subparagraph (1)(a) refers to the scope of international cooperation for investigations, prosecutions, and judicial proceedings; subparagraph (1)(b) refers to the scope of international cooperation for the collection, obtaining, preservation and sharing of electronic evidence.

In paragraph (1)(a), the reference to "articles 6 to 16" has been deleted, so that scope of procedural measures would apply to criminal offences established in accordance with this Convention (that is, Chapter II offences, on the basis that Article 17 is deleted from Chapter II).

In paragraph (1)(b), the proposal deletes the references to articles 6 to 16, serious crimes, and article 17, and replaces these references with the operative substance of article 17, so that international cooperation for the collection, obtaining, preservation and sharing of electronic evidence would apply to:

- Offences established in accordance with this convention (that is, Chapter II offences, on the basis that Article 17 is deleted from Chapter II)
- [criminal] offences with a penalty of three years or more, and

- [criminal] offences established in accordance with United Nations conventions and protocols, with a penalty of three years or more, when committed through the use of a computer system / ICT device.

We note that there remain several live issues for discussion in relation to this proposal. These include: whether the articles should refer to “offences” or “criminal offences”; and whether the threshold of three years or serious crimes is appropriate [noting this issue is also under consideration in other subgroups and in plenary].

**[I will hand back over to my co-chair Andrea to conclude our report.]**

We allowed member states time to consider the proposal and met this morning to receive the views. [Several / a majority of / all but two] member states expressed a willingness to consider the proposal and viewed it as a good basis upon which this plenary should to proceed to address the attendant issues in this group.

[In addition to the co-chair’s proposal, during the informal meetings several member states made proposals to add further paragraphs to articles 3, 17, and 35, and additional criminal offences to Chapter II of the convention. While those states did not object to using the cochair’s proposal as a basis for the plenary to proceed, they considered that, given the interlinkages between the articles under consideration by our group and many other parts of the convention draft text still in flux, they advised they are not ready to consider withdrawing those proposals at this time.]

In addition distinguished delegates, as co-chairs we believed that inclusivity, another founding principle to which we committed to respect in this process was vital. We met with multistakeholders to understand their views of the ongoing proceedings. They raised the following theme of issues: scope of application, jurisdiction, human rights safeguards, checks on practices (illegal or otherwise) including the appropriate judicial oversight. These issues were also raised by member states in the informal consultations.

We wish to thank member states for engaging constructively in the dialogue. We remain hopeful that, through further dialogue, we will decrease differences and increase the shared interests leading us to a path of consensus and a successful convention.

We also wish to thank Madame chair for reposing the confidence in us to assist in this very important process.

Thank you, Madame Chair.