

Report by the Facilitator at the AHC Plenary
on the result of the consultation on Group 6 – Article 25-30

on September 1st, 2023

Madam Chair,

1. The Facilitator's approaches are (1) the Chair text reflects the best assessment of the negotiation in the last 5 rounds; (2) the Chair text should contain only articles with broad support; (3) the Chair text should only be amended to reach consensus by giving further clarity and flexibility to States for implementation without defeating the Convention's purposes. Therefore, the facilitator would only propose minor changes which (1) accommodate divergent State current practice; and (2) provide for appropriate tools to facilitate the future implementation of the future Convention.
2. After conducting consultation bilaterally and in group with delegations, I would like to submit amended texts for Group 6 (Articles 25-30) for the Plenary for consideration.
3. The proposed text makes some changes to the Chair's original texts as follows:
 - a. In Article 25 - paragraph 1 - the phrase "**content data and subscriber information**" is added after "traffic data" for clarity.
 - b. In Article 25 - paragraph 2- the phrase "**or any longer period in accordance with the domestic laws of that State Party**" is added after the ninety as currently States have imposed longer periods of data preservation.
 - c. The term "**including a legal person**" is added in Article 25.2; 25.3; 27 after "a person" for clarity.
 - d. In Article 28, the phrase "**in the territory of that State Party**" is moved from the chapeau towards the end of paragraph 1 for clarity.
 - e. In Article 29.1 and Article 30.1, the word "**may**" will replace "shall" as there is no consensus to make the real-time collection of traffic data and interception of content data an obligation under the Convention.

4. The facilitator's proposal has been circulated by the secretariat since yesterday afternoon. As of now, the facilitator has received confirmation from many delegations for their support for Article 25 to Article 28 as proposed. Therefore, I hope these Articles can be agreed ad ref.
5. However, regarding Article 29 & 30, several delegations have expressed their reservation to the facilitator's proposed amendment and expect further discussion at the 7th session of the Committee.
6. Regarding flexibility under Art. 29 & 30 as proposed, in the facilitator's opinion, it does allow States which are not both legally or technically possible to implement the measures envisaged in Articles 29 & 30 to either (1) confine the measures to crimes beyond the scope of this Convention as stipulated in the current draft of Article 23; or (2) request for assistance from other State Parties as provided for in Articles 45 and 46 if the need arises and all conditions and safeguards are met.

Thank you for your attention.