

Madam Chair,

Excellencies, Distinguished delegates, ladies and gentlemen,

We express our appreciation for the confidence reposed in us by Madam Chair and all delegations to coordinate the informal consultations in respect of thematic group 7 covering Articles 13 to 15 of the DTC at this 06th session.

In this report, the Ad Hoc Committee will find :

1. a few proposals that garnered consensus and are marked agreed in informals,
2. some proposals that majority of delegations agreed with but a few dis agreed, and so could not be agreed in informals,
3. some proposals that there was division between delegations and attempts to reduce the gap did not yield any fruit, with the differing positions reflected,
4. some new proposals that were made but delegations could not agree upon

I must put on record our gratitude to the distinguished delegate of Austria, Mrs. Judith HERRNFELD, who volunteered to serve as our Secretariat, without whose support the group's work would have been impossible.

I thank all the delegations that made tireless efforts to ensure that the group consultations were fruitful, and for all their support and tolerance.

Disclaimer: There is no special meaning whether there are track changes or not – the group worked as best as feasible without Secretariat support.

Article 13. Offences related to [add: child pornography, (Namibia)] online child sexual abuse or child¹ sexual exploitation material [add: also known as (alt: and, Iran) child pornography (Holy See)]²

Offences related to child sexual abuse or child sexual exploitation material referred to as child pornography in other instruments (proposal by Coordinator)

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and [without right alt: unlawfully (Iran)], the following conduct [agreed in informals, except horizontal issue of without right/unlawfully):

(a) Producing, offering, selling, distributing, transmitting, broadcasting, displaying, publishing or otherwise making available child sexual abuse or child sexual exploitation material through [a computer system] [an information and communications technology device]; [agreed in informals]

(b) [Soliciting; delete: Japan, retain: Australia, Nigeria, CARICOM, USA, Holy See, Iran],³ procuring, [accessing; delete: Japan⁴ retain: Australia, Canada Nigeria, Norway, UK, CARICOM, USA, Holy See, Iran, EU&MS] with child sexual abuse or child sexual exploitation material through [a computer system] [an information and communications technology device]; [retain Chairs proposal: Iran, Namibia]

(c) Possessing or controlling child sexual abuse or child sexual exploitation material stored in [a computer system] [an information and communications technology device] or another storage medium; [agreed in informals]

~~(d) Financing, facilitating or profiting from the offences established in accordance with this article⁵.~~ [retain: financing and profiting (Iran)]

¹ Singapore: agreement subject to definition of the child: "A State Party may require that the material identified in para 2 be limited to such material that involves a child [below a threshold age which shall not be less than 16 years of age] [alt: who has not attained the legal age to engage in sexual activity as defined by that State Party's domestic law]"; objection by Pakistan.

² Holy See referred to the proposal made during plenary on 13/2bis that is upheld.

³ If it means requesting CSAEM such action could be covered by Art. 19

⁴ See addition in para 6.

⁵ Acts covered by lit. a as well as Art. 16 and 19 para 1 of the Convention.

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[add (e) Persuasion or coercion of the child to access [sexual alt: pornographic (Brazil)] material [add: or providing such material to the child (Iran); support: Holy See] using information and communications technologies (Iran) (support: Russian Federation; Delete: EU and its mS, Philippines, Canada, Norway, US, Australia, Japan, UK, CARICOM,)] [keep in separate provision in the same article (Holy See)] [support: Pakistan;]

2. For the purposes of this article the term “child sexual abuse or child sexual exploitation material” shall include visual material and may include written or audio content [whether such depiction or content is real or unreal (Iran), delete: UK, Canada, EU&MS; US, Japan, New Zealand, Australia, Nigeria, Norway] that depicts, describes or represents a child,

(i) Engaging in real or simulated sexual [activity (alt: sexually explicit activity (EU&MS⁶), Canada] [or pose delete: EU&MS, CARICOM; retain: Namibia, Australia, Nigeria, Dominican Republic];

(ii) In the presence of a person engaging in any sexual activity (opposed by EU&MS, Japan, UK, retain: US, Brazil, Dominican Republic, Iran, Holy See, Namibia, ROK, CARCOM, Nigeria, Tanzania);

(iii) Whose sexual parts are displayed for primarily sexual purposes; or [agreed in informals]

(iv) subjected to torture or cruel, inhumane or degrading treatment or punishment and such material is sexual in nature (iv opposed by EU&MS, Japan, UK, Norway, CARICOM; retain: Namibia, Brazil, Nigeria, New Zealand, Australia, US, Pakistan, Iran, El Salvador, Republic of Korea);

3. A State Party may require that the child sexual abuse or child sexual exploitation material identified in paragraph 2 be limited to material that:

(a) Depicts or represents a real child; or

(b) Visually depicts child sexual abuse or child sexual exploitation (delete: US, Canada, Dominican Republic, retain; EU&MS).

[delete whole para: Holy See, Iran, Pakistan; retention: Singapore, EU&MS, New Zealand, Nigeria, Japan, UK Australia]

⁶ EU will get back to assess whether sexual activity is agreeable.

[3bis. Each State Party may establish as aggravating circumstances to the offences established in accordance with this article, where such offence or offences have been perpetrated against a mentally or physically disabled child (Iran); delete; US; Canada, New Zealand, Dominican Republic, Norway, UK, EU&MS, Japan, ROK, Australia, Nigeria, CARICOM, Tanzania]

4. States Parties shall [alt: may (Iran)] take steps to exclude the criminalization of children in appropriate circumstances for self-generated material as described in paragraph 2 of this article [delete para 4: Pakistan, Iran, retain with "shall": Holy See, Namibia; retain with "may": Holy See, Japan, Singapore, Nigeria, Norway, Switzerland, CARICOM, Dominican Republic, Tanzania].

[4alt1. States Parties may take steps to exclude the application of the criminal offences under para 1 to children for self-generated material. (Australia; support: Japan, US, UK, New Zealand, Dominican Republic, Norway, Canada)]

4bis⁷. Consistent with any domestic or international obligations, for children who have reached the legal age to engage in sexual activity under domestic law, State Parties may take steps to exclude from para 2 material that is produced as part of a consensual sexual relationship and the material is maintained exclusively for private use of the parties depicted. (proposal by US, support: Australia, New Zealand, CARICOM, EU&MS, Japan, Switzerland, Norway, Canada, UK; delete: Iran).

[4alt2. States Parties shall enact laws which are more conducive to the realization of the rights of the child, and which may be contained in

1. the law of a State Party, or

2. international law in force for the State (Pakistan)]

[support: Iran; delete: Canada, New Zealand, Norway, Australia, EU&MS, CARICOM, UK, Singapore, Japan, Nigeria, US, Switzerland, reservation: Indonesia]

⁷ In addition to proposal of to para 4.

[5⁸. States Parties shall ensure that there are appropriate safeguards under domestic law to protect children who are accused of this offence, consistent with their obligations under the Convention on the Rights of the Child and its Protocols as well as other international or regional instruments to which they are a Party.

[add new 6. A State Party may reserve the right not to apply in part paragraphs 1 (b) and (d) and 2 of this Article. (Japan); delete: Iran, USA, Australia, Canada, Holy See, Dominican Republic, Namibia]

[Add new 7. States Parties shall adopt such legislative and other measures as may be necessary to ensure that service providers and platforms remove or render the material as referred to in para 2 inaccessible (Iran); support: Brazil; delete: Australia, EU&MS, Canada, US, Norway, Switzerland, UK, Caricom, Japan, New Zealand, Nigeria]

Article 14. Solicitation or grooming for the purpose of committing a sexual offence against a child (agreed in informals)

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, the act of intentionally communicating, soliciting, [add: threatening, encouraging, coercing, deceiving (Iran); support: Holy See, India, Brazil, Namibia, ROK; delete: Tanzania, Singapore, Nigeria, South Africa, EU&MS, Norway; flexible: US, Caricom, Canada, Japan, Australia] or making any arrangement through [a computer system] [an information and communications technology device] for the purpose of committing [or facilitating (Australia), support: Iran, India, Brazil, Australia, Ghana, ROK; delete: (EU&MS), Nigeria, Norway, Japan; flexible: Canada, South Africa, US, Namibia; reserve: Caricom] a sexual offence against a child, as defined in domestic law, including for the commission of any of the offences established in accordance with article 13.

⁸ More a matter of consistence to be assessed by the Chair for final draft: Parallel provision in Art. 21 6bis (proposal by Ghana) – delete para 5 in case proposal is retained.

2. A State Party may require an act in furtherance of the conduct described in paragraph 1.

(agreed in informals)

3. A State Party may consider extending criminalization in accordance with paragraph 1 in relation to a person believed to be a child. **(agreed in informals)**

4. States Parties may take steps to exclude the criminalization of children for conduct in paragraph 1. **(agreed in informals)**

Article 15. [Non-consensual delete: Iran; retain: EU&MS, Brazil, Namibia, CARCIM, Holy See, UK, India, Japan, ROK, New Zealand, Norway, US, Australia, Canada, Dominican Republic] dissemination of intimate images

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and [without right or unlawfully]⁹, the selling¹⁰, distributing, transmitting, publishing or otherwise making available of an intimate image of a person by means of [a computer system] [an information and communications technology device], [without the consent of the person depicted in the image delete: Iran; retain: EU&MS, Brazil, Namibia, CARICOM, Holy See, UK, India, Japan, ROK, New Zealand, Norway, US, Australia, Canada, Dominican Republic].

⁹ Horizontal issue.

¹⁰ Offering: covered by Art. 19 (Attempt).

[add: 1bis. A State Party, where appropriate, may consider not to deem the absence of consent of the person depicted in the image a requirement in establishing the offence referred to in para 1 of the Article (Iran); delete: EU&MS, CARICOM, UK, Japan, ROK, New Zealand, Norway, US, Australia, Canada, Dominican Republic]

2. For the purpose of paragraph 1, "intimate image" shall mean a visual recording of a person over the age of 18 made by any means, including a photograph, or video recording, that is sexual in nature, in which the person is exposing their sexual parts¹¹, or is engaged in sexual activity, which was private at the time of the recording, and the persons depicted, maintained a reasonable expectation of privacy at the time of the offence. (scrutiny reservation: Iran)

3. A State Party may extend the definition of intimate images, as appropriate, to depictions of persons who are under the age of 18 if they are of legal age to engage in sexual activity under domestic law and the image does not depict child abuse or exploitation. [agreed in informals]

4. For the purpose of this article, a person, who is under the age of 18 and depicted in an intimate image, cannot consent to the dissemination of an intimate image that would constitute CSAEM under Article 13 [under domestic law]. (because this would be considered CSAEM under the Convention). [agreed in informals]

5. A State Party may reserve the right to not apply in whole or in part this article. (delete: Iran, retain: EU&MS, Norway, UK, Japan, ROK, New Zealand, Norway, Australia, Dominican Republic)

Thank you for your attention.

Terlumun George-Maria TYENDEZWA

01 September 2023

¹¹ Sexual parts was considered to be the broader term compared to „sexual organs“ that seem to encompass only reproductive organs.