COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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The Convention on Cybercrime and the question of "terrorist use of the internet"

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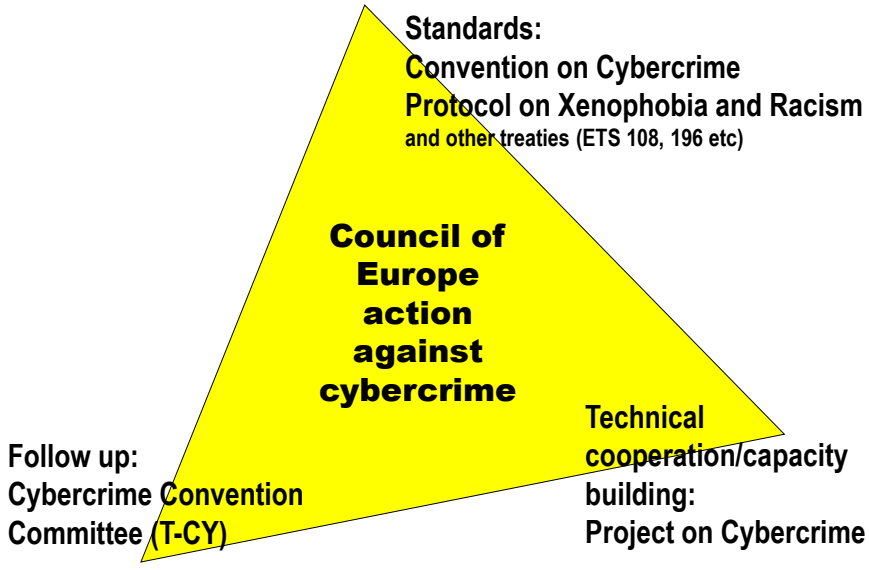
The Council of Europe approach against cybercrime



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The Project on Cybercrime

Project objective: To promote broad implementation of the Convention on Cybercrime (ETS 185) and its Protocol on Xenophobia and Racism (ETS 189)

Output 1: Legislation
Draft laws meeting the standards of ETS 185 and 189 available in at least 10 European and 5 non-European countries

Output 2: Criminal justice capacities
Capacities of criminal justice systems strengthened to investigate, prosecute and adjudicate cybercrime

Output 3: International cooperation
Capacities of criminal justice bodies to cooperate internationally re-enforced

120+ activities to date

Funding:

- **CoE , Microsoft and Estonia**

Follow up project:

- **in preparation March 2009 – June 2011 (subject to resources)**

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1 Cybercrime – current challenges

Dependency of societies on information and communication technologies. This dependency makes societies highly vulnerable to cybercrimes. Cybercrime is transnational crime.

Shift in the threat landscape: from broad, mass, multi-purpose attacks to specific attacks on specific users, groups, organisations or industries, increasingly for economic criminal purposes

Malware – that is, malicious codes and programmes including viruses, worms, trojan horses, spyware, bots and botnets – is evolving and rapidly spreading

Spam nuisance and carriers of malware

Child pornography and sexual exploitation on the internet increasingly commercial

Offences related to identity theft

Offenders increasingly organising for crime aimed at generating illicit profits

Growing risk of cyber-attacks against critical infrastructure

Use of internet for terrorist purposes (attacks against infrastructure, logistics, recruit-ment, finances, propaganda)

Botnets one of the central tools of criminal enterprises (DDOS, extortion, placing of adware and spyware)

But: Vast majority of people use ICT for legitimate purposes
Need to balance security and civil rights concerns

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Terrorist use of the Internet

- Possible attacks via internet/ICT on critical information infrastructure and other critical infrastructure, systems and legal interests, including loss of life
- Dissemination of illegal contents, including threats of terrorist attacks, incitement to or promotion of terrorism, recruitment or training
- Use of ICT by terrorists for logistical purposes such as internal communication, gathering intelligence, target analyses

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Terrorist use of the internet: What criminal law response?

Question analysed by the Council of Europe Group of experts on terrorism, CODEXTER (2005 – 2008):

- Are existing international instruments sufficient or should additional treaties be developed to deal with the use of the internet for terrorist purposes?

Result:

- Full and broadest possible implementation of the Convention on Cybercrime and the Convention for the Prevention of Terrorism should be given priority
- Additional instruments not necessary at this stage

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3 The Convention on Cybercrime

- Elaborated by the Council of Europe with the participation of Canada, Japan, South Africa and the USA
- Opened for signature in Budapest in November 2001
- In force since July 2004

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Structure and content of the Convention

Chapter I: Definitions

Chapter II: Measures at national level
- Section 1 - Substantive criminal law (offences to be criminalised)
- Section 2 - Procedural law
- Section 3 - Jurisdiction

Chapter III: International cooperation
- Section 1 - General principles
- Section 2 - Specific provisions

Chapter IV: Final provisions

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Chapter II – Measures at national level

Section 1 – Substantive criminal law

- Title 1 - Offences against the confidentiality, integrity and availability of computer data and systems (illegal access, illegal interception, data interference, system interference, misuse of devices)
- Title 2 – Computer-related offences (forgery, fraud)
- Title 3 – Content-related offences (child pornography)
- Title 4 – Infringements of copyright and related rights
- Title 5 – Ancillary liability and sanctions (attempt, aiding, abetting, corporate liability, sanctions and measures)

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Data and system interference

Article 4 of the Convention: data interference

- Establish as criminal offences under domestic law, when committed intentionally, the damaging, deletion, deterioration, alteration or suppression of computer data without right.
- A Party may reserve the right to require that the conduct described in paragraph 1 result in serious harm.

Article 5 of the Convention: system interference

- Establish as criminal offences under domestic law, when committed intentionally, the serious hindering without right of the functioning of a computer system by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing computer data.

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Section 2 – Procedural law

- Title 1 – Common provisions (scope of procedural provisions, conditions and safeguards)
- Title 2 – Expedited preservation of stored computer data (and traffic data and partial disclosure)
- Title 3 – Production order
- Title 4 – Search and seizure of stored computer data
- Title 5 – Real-time collection of computer data (traffic data, interception of content data)

These apply to all criminal offences involving a computer system!

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Chapter III - International cooperation
Section 1 – General principles

- Art 23 General principles on international cooperation
- Art 24 Principles related to extradition
- Art 25 Principles related to mutual legal assistance
- Art 26 Spontaneous information
- Art 27 MLA in the absence of applicable international instruments
- Art 28 Confidentiality and limitation on use

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Chapter III - International cooperation...

Section 2 – Specific provisions

- Art 29 - Expedited preservation of stored computer data
- Art 30 - Expedited disclosure of preserved computer data
- Art 31 - Mutual assistance re accessing stored computer data
- Art 32 - Trans-border access to stored computer data (public/with consent)
- Art 33 - Mutual assistance in real-time collection of traffic data
- Art 34 - Mutual assistance re interception of content data
- Art 35 - 24/7 network

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Chapter IV – Final provisions

- Art 36 Signature and entry into force (open to member States and non-members which have participated in its elaboration)
- Art 37 Accession (any State may accede following majority vote in Committee of Ministers and unanimous vote by the parties entitled to sit on the Committee of Ministers)
- Art 40 – 43 Declarations, reservations
- Art 46 – Consultations of the parties

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The Convention on Cybercrime and terrorist use of ICT

- Convention aimed at comprehensive protection of integrity and availability of computer data and systems
- Data and system interference (including attacks against critical infrastructure through ICT) covered under Articles 4 and 5
- But review level of penalties: fines or 6 months imprisonment in some, up to 12 years imprisonment in other countries
- Procedural provisions apply
- International cooperation provisions apply
- Minimum of harmonisation of substantive and procedural law
- Convention on Cybercrime open for accession to third countries
- Main problem: More countries need to become Parties to the Convention

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Implementation – current status

- The Convention entered into force in July 2004
- 23 ratifications + 21 signatures (as of June 2008)
- Signed by Canada, Japan, South Africa, ratified by USA
- Costa Rica, Mexico, Philippines have been invited to accede
- Legislative amendments adopted or underway in many other countries (Argentina, Brazil, Caribbean countries, Colombia, Dominican Republic, Egypt, India, Indonesia, Nigeria, Philippines, Sri Lanka etc.) and accession to the Convention under consideration in many of them

= Major global trend towards stronger cybercrime legislation

= Convention provides a global standard

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Implementation of the Convention

Ratified:

- Albania
- Armenia
- Bosnia and Herzegovina
- Bulgaria
- Croatia
- Cyprus
- Denmark
- Estonia
- Finland
- France
- Hungary
- Iceland
- Italy (5 June 08)
- Latvia
- Lithuania
- Netherlands
- Norway
- Romania
- Slovakia
- Slovenia
- The „former Yugoslav Republic of Macedonia“
- Ukraine
- United States of America

Signed:

- Austria
- Belgium
- Canada
- Czech Rep
- Germany
- Georgia
- Greece
- Ireland
- Japan
- Luxembourg
- Malta
- Moldova
- Montenegro
- Poland
- Portugal
- Serbia
- South Africa
- Spain
- Sweden
- Switzerland
- United Kingdom

Invited to accede:

- Costa Rica
- Mexico
- Philippines

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4 Convention for the Prevention of Terrorism (Council of Europe)

- Opened for signature in Warsaw 2005
- Entered into force in June 2007
- 14 ratifications + 28 signatures by May 2008
- Open for accession by third countries

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Convention for the Prevention of Terrorism: contents

- Article 4 – National prevention policies + Article 5 – international cooperation on prevention of terrorism
- Article 5 – Public provocation to commit a terrorist offence
- Article 6 – Recruitment for terrorism
- Article 7 – Training for terrorism
- Article 8 – Irrelevance of the commission of a terrorist offence
- Article 13 – Protection, compensation and support for victims of terrorism
- Article 15 – Duty to investigate
- Article 17 – International co-operation in criminal matters
- Article 18 – Extradite or prosecute
- Article 20 – Exclusion of the political exception clause
- Article 21 – Discrimination clause
- Article 24 – Accession to the Convention

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Convention for the Prevention of Terrorism: offences

Article 5 – Public provocation to commit a terrorist offence

1 For the purposes of this Convention, "public provocation to commit a terrorist offence" means the distribution, or otherwise making available, of a message to the public, with the intent to incite the commission of a terrorist offence, where such conduct, whether or not directly advocating terrorist offences, causes a danger that one or more such offences may be committed

2 Each Party shall adopt such measures as may be necessary to establish public provocation to commit a terrorist offence, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

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Convention for the Prevention of Terrorism: offences

Article 6 – Recruitment for terrorism

1 For the purposes of this Convention, "recruitment for terrorism" means to solicit another person to commit or participate in the commission of a terrorist offence, or to join an association or group, for the purpose of contributing to the commission of one or more terrorist offences by the association or the group.

2 Each Party shall adopt such measures as may be necessary to establish recruitment for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

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Convention for the Prevention of Terrorism: offences

Article 7 – Training for terrorism

1 For the purposes of this Convention, “training for terrorism” means to provide instruction in the making or use of explosives, firearms or other weapons or noxious or hazardous substances, or in other specific methods or techniques, for the purpose of carrying out or contributing to the commission of a terrorist offence, knowing that the skills provided are intended to be used for this purpose.

2 Each Party shall adopt such measures as may be necessary to establish training for terrorism, as defined in paragraph 1, when committed unlawfully and intentionally, as a criminal offence under its domestic law.

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5 Conclusions

Attacks via internet/ICT on critical information infrastructure and other critical infrastructure, systems and legal interestets, including loss of life

Dissemination of illegal contents, including threats of terrorist attacks, incitement to or promotion of terrorism, recruitment or training

Use of ICT by terrorists for logistical purposes such as internal communication, gathering intelligence, target analyses

Covered by the

- Convention on Cybercrime

in combination with the

- Convention for the Prevention of Terrorism

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Conclusions

The way ahead:

- Full implementation of the Convention on Cybercrime in Europe
- Support to implementation globally through the Project on Cybercrime and other measures (resources!)
- Full implementation of the Convention for the Prevention of Terrorism
- Balance security and human rights concerns and establish safeguards
- Disruption of attacks (take down/blocking/filtering of websites, servers, IP addresses, domains): what procedures, conditions, regulations?

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Thank you.

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