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The Convention on Cybercrime: state of implementation

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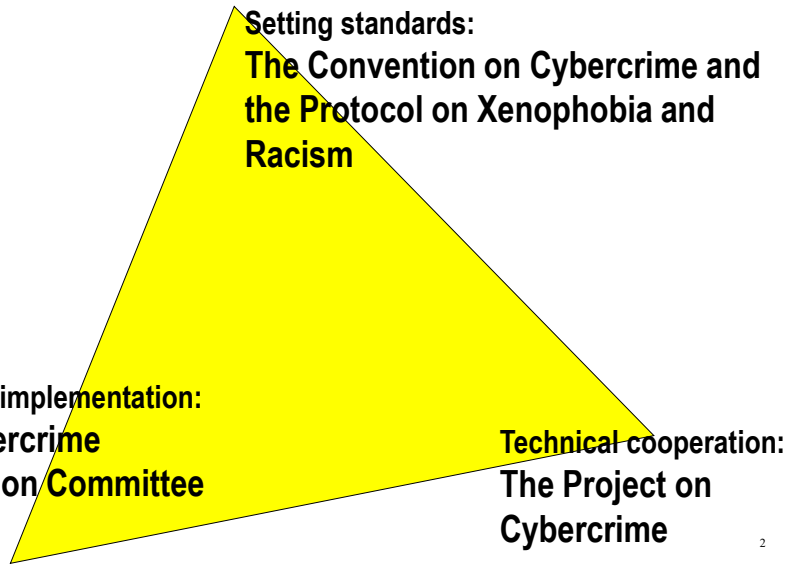
1 Supporting the implementation of the Convention on Cybercrime: the approach



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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

Output 2: Criminal justice capacities

Output 3: International cooperation

Indicators of success include:

- 40 countries will be parties to the Convention (ETS 185), and 12 will be parties to the Protocol (ETS 189)

Start: Sep 06

End: Feb 09

Funding: CoE, Microsoft, Estonia

Additional funding required

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2 Signatures, ratifications, accessions

Convention on Cybercrime (as at 31 March 2008):

- **Ratifications: 22**
- **Signatures: 21**
- **Invitations to accede: 2**

Protocol on Xenophobia and Racism committed through Computer Systems (as at 31 March 2008):

- **Ratifications: 11**
- **Signatures: 20**
- **Invitations to accede: 0**

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Countries that are parties to

the Convention:

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

the Protocol:

- Albania
- Armenia
- Bosnia and Herzegovina
- Cyprus
- Denmark
- France
- Latvia
- Lithuania
- Slovenia
- The „former Yugoslav Republic of Macedonia“
- Ukraine

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Countries that have signed the Convention:

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

Invited to accede:

- Costa Rica
- Mexico

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Trends in ratifications to date:

Year	2002	2003	2004	2005	2006	2007	2008
Ratifications	+2	+2	+4	+3	+7	+3	+1 (Jan-Mar)
Total	2	4	8	11	18	21	22

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Factors preventing faster ratification:

- Countries should have legislation compliant with Convention when depositing the instrument of ratification/accession
- Convention has broad range of procedural provisions that take time and parliamentary majorities to adopt
- Cybercrime not always a priority of governments/parliaments

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Outlook:

Expect 15+ ratifications/accessions between April 2008 and February 2009

For example:

- Italy: Parliament ratified in March 2008
- Germany: Expected to ratify in April/May 2008
- Georgia: Signature in April 2008
- South Africa: Signature of Protocol in April 2008
- Philippines: Formal invitation to accede in May 2008

Internet Governance Forum (India, December 2008) as target date?

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3 The Convention as a guideline for the development of cybercrime legislation

Major global trend since 2006: countries worldwide are developing legislation on cybercrime

- For example: Argentina, Brazil, Colombia, Egypt, India, Indonesia, Morocco, Nigeria, Pakistan, Philippines, most European countries
- Or adopted new legislation in 2007/8 such as Botswana, Dominican Republic or Sri Lanka

The Convention on Cybercrime serves as a guideline (or model law) globally

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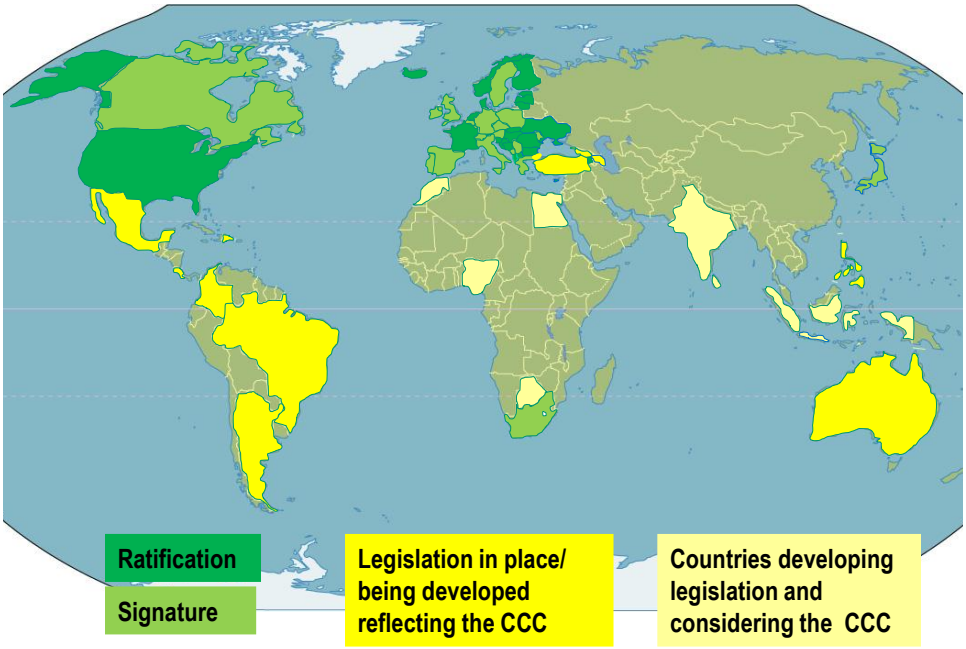
Convention on Cybercrime (status 31 March 2008)



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Model law function of the Convention

- Use as a checklist
- Compare provisions
- Use wording

Provision of Convention	Provision in national law
Art 4 System interference	?
Art 6 Misuse of devices	?
Art 9 Child pornography	?
Art 16 Expedited preservation	?
Art 18 Production order	?

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Support by the Project on Cybercrime

- Country profiles on cybercrime legislation
- Detailed analyses of draft laws (so far: Argentina, Brazil, Colombia, Egypt, India, Indonesia, Nigeria, Philippines, Serbia)
- Sharing experience (Octopus Interface, regional events)

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4 The Convention as a framework for international cooperation

- The Convention (Chapter III) is increasingly used as a legal basis for international cooperation
- Contributes to the creation of additional 24/7 points of contact
- Examples of good practice available

Issues:

- Need to enhance the number of countries that are party to the Convention
- Need to make 24/7 points of contact more effective
- Preliminary measures (e.g. expedited preservation) need to be followed up by efficient MLA process

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5 Acceding to the Convention

Article 37: Convention is open for accession by third countries

Accession process:

1. Once legislation has been adopted or is in advanced stage, government to send a letter to Secretary General of CoE with a request to initiate consultation with parties to the Convention
2. Secretariat of CoE will carry out consultations and put question before Committee of Ministers
3. If vote is positive, the country will be invited to accede
4. The country is then free to decide when to accede, that is, deposit the instrument of accession

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6 Issues

Convention opened for signature in 2001. Focus on conduct rather than technology. Still up to date.

For example:

- Covers DDOS attacks and measures against cyberterrorism
- Covers most elements related to ID theft and related fraud

Cybercrime keeps evolving: need continuous review of the adequacy of the international response

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Issues

Investigating cybercrime/
preventing terrorism/
data retention/
authentification etc

What

Balance?

Privacy/
protection of
personal data/
freedom of expression

Assumption: 99.9% of ICT use is legitimate

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Issues

Law enforcement

What

relationship?

Service providers

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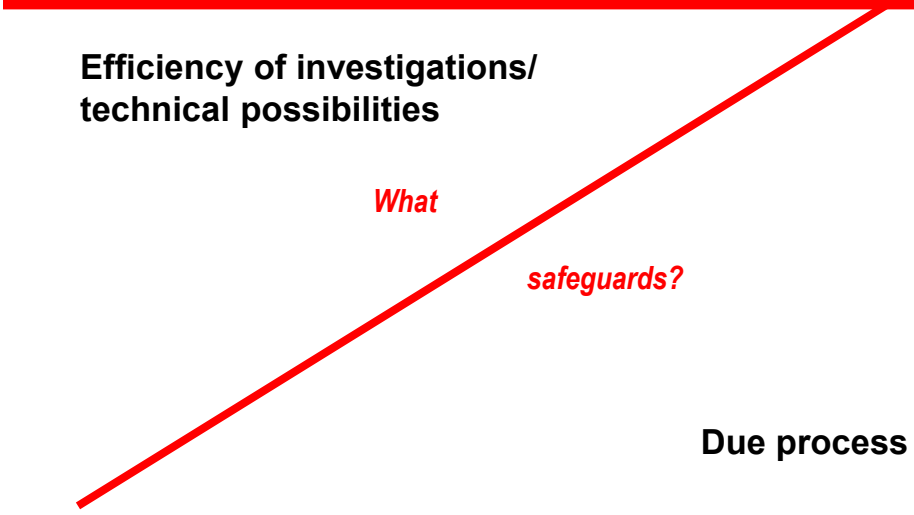
Issues



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Issues

= importance of Conditions and Safeguards (Article 15 of the Convention)

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6 The way ahead

- Need to enlarge the number of parties to the Convention
- Support strengthening and harmonisation of cybercrime legislation worldwide using the Convention as a guideline
- Promote accession to the Convention as a framework for international cooperation
- Clear legal basis for public-private partnership
- Guidelines for cooperation between ISP and law enforcement
- Strengthen law enforcement/criminal justice capacities
- Balance security concerns and civil rights

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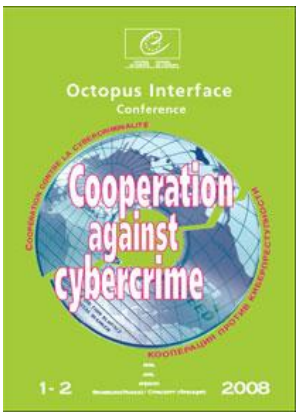

Thank you.

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