

A proposal for a United Nations Treaty combating online child sexual abuse

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by

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1. Introduction

A United Nations Treaty or agreement must establish minimum rules concerning the prevention of online child sexual abuse and sexual exploitation.

1.1. The first United Nations treaty was the Convention on the Rights of the Child that was adopted in 1989. Article 34 of the Convention obliges that States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse, and requires Parties to take all appropriate measures to prevent “the exploitative use of children in pornographic performances”.

Online child sexual abuse and sexual exploitation constitutes serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being.

Serious criminal offences such as sexual abuse and sexual exploitation of children require a comprehensive approach covering the the protection of child victims and the prevention of the phenomenon. The child’s best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the United Nations Convention on the Rights of the Child.

The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child, included the sale of children, child prostitution and child pornography.

1.2. A General Assembly Resolution was adopted in 2007 on “Effective crime prevention and criminal justice responses to combat sexual exploitation of children”.

1.3. ITU has launched the Child Online Protection (COP) Initiative in November 2008 as a multi-stakeholder effort within the Global Cybersecurity Agenda (GCA) framework. The initiative brings together partners from all sectors of the global community to create a safe and empowering online experience for children around the world. COP was presented to the ITU Council in 2008 and endorsed by the UN Secretary-General, Heads of State, Ministers and heads of international organizations from around the world.

COP has also strengthened important partnerships with key stakeholders. The next meeting will be held on January 23, 2018 in Geneva.

1.4. After the introduction of the global communications in cyberspace and the social media, online child sexual abuses and sexual exploitation has been increasingly spreading to such extent that it requires in 2017 in my opinion a comprehensive United Nations approach on the prevention of such online abuses.

2. Regional measures

2.1. Council of Europe Cybercrime Convention of 2001

Council of Europe Convention on Cybercrime of 2001 Article 9, includes the producing, offering or making available, distributing or transmitting, procuring, and possessing child sexual abuse in a computer system.

This Article includes material that visually depicts a minor engaged in sexually explicit conducts, a person appearing to be a minor, or realistic images representing a minor. In this Convention, a minor shall include all persons under 18 years of age, alternatively 16 years.

2.2. Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 2007.

The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is an important step in the process of enhancing international cooperation. Ratifications are made by 42 countries, but 5 countries have only signed the Convention.

Council of Europe adopted this Convention with measures to prevent sexual exploitation and sexual abuse of children, and promote international cooperation against such crimes. It was emphasized the need to prepare a comprehensive international instrument focusing on the preventive, protective and criminal law aspects of all forms of sexual exploitation and sexual abuse of children.

Substantive criminal offences are also focused, such as sexual abuse, offences concerning child prostitution, offences concerning child pornography, offences concerning the participation of a child in pornographic performances, corruption of children, and solicitation of children for sexual purposes.

2.3. European Union

Another legal background in Europe is the Directive of the European Parliament and of the Council of December 13, 2011 (2011/93/EU), on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing the Council Framework Decision of 2004.

The Directive has the following statement:

"The removal of child pornography content at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long."

Article 25 in the Directive has the following content:

”Measures against websites containing or disseminating child pornography.

1) Member States shall take the necessary measures to ensure the prompt removal of webpages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside their territory.

2) Member States may take measures to block access to webpages containing or disseminating child pornography towards the Internet users in their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. These safeguards shall also include the possibility of judicial redress.”

The implementation of Article 25 on measures against websites containing or disseminating child pornography was published by the Commission of the European Union in a report in 2016 as follows:

“The Commission acknowledges the significant efforts made by the Member States in the transposition of Article 25 of the Directive.

There is still room however, to use its potential to the full by continuing to work on its complete and correct implementation across Member States.. Some key challenges ahead include ensuring that child sexual abuse material in Member States territory is removed promptly and that adequate safeguards are provided where the Member State opts to take measures to block access to Internet users within its territory to web pages containing child sexual abuse material.

Therefore for the time being, the Commission has no plans to propose amendments to Article 25 or complementary legislation.. It will instead focus its efforts on ensuring that children benefit from the full added value of the Article through its complete transposition and implementation by Member States.”

Europol European Cybercrime Center (EC3) has in 2017 launched a Report “Internet Organised Crime Threat Assessment (IOCTA 2017)”, that includes Child Sexual Exploitation Online (page 34-41). This report includes as follows:

“Live-distant child abuse (LDCA), or the live streaming of child abuse.

LDCA is the live broadcast of video footage of a child being sexually abused, where the actions of the hands-on offender are directed by the viewer or viewers who are observing remotely.

With comparatively wealthy Westerners as the main ‘customers’ for this type of activity, the financial incentives for a poor family in Southeast Asia or Africa who are prepared to subject children (even their own) to this can be considerable, while for the consumer the costs are negligible.

Investigation of these cases can be additionally problematic due to the environments in which the abuse occurs. In the Philippines for example, there is free public wi-fi widely available even in poor neighbourhoods, making location via IP data very difficult. Moreover, the crowded and often temporary neighbourhood constructions in poor districts make physical location equally difficult.”

A ‘Stop Child Abuse - Trace an Object’ campaign was launched by Europol in May 2017.

3. Global measures

3.1. CIRCAMP

Important initiatives was taken by the work on the CIRCAMP (COSPOL Internet Related Child Abusive Material Project) network that was launched in 2004. CIRCAMP was organized by Norway and United Kingdom, and had 14 national police forces as members in addition operational support from Europol and INTERPOL.

The primary goal for CIRCAMP was *"to detect, disrupt and dismantle networks, organizations or structures used for the production and/or distribution of child abusive files and to detect offenders, identity children and stop abuses."*

The Action Plan for CIRCAMP introduced blocking methodology aimed at stopping the distribution of child abusive images and material. CIRCAMP was targeting web domains, and web domains only, disseminating child abusive files. The primary aims of domain based filtering and displaying a STOP page for a user accessing a web site with child abusive content. The goal was to prevent both accidental and deliberate access to the child sexual abusive material.

3.2. INTERPOL

INTERPOL was a member of CIRCAMP, providing and updating the national offices of INTERPOL with a Worst of list of domains (IWOL) that was introduced in 2010. INTERPOL has taken responsibility of providing a list of domains containing child sexual abuse content to any Internet Access Service Providers (ASP) willing to participate in reducing the availability of such material on Internet.

The criteria of being to the "INTERPOL Worst of list" are very strict and includes as follows:

- *The children are "real". Sites containing only computer generated, morphed, drawn or pseudo images are not included;*
- *The ages of the children depicted in sexual exploitative situations are (or appear to be) younger than 13 years;*
- *The abuses are considered severe by depicting sexual contacts or focus on the genital or anal region of the child;*
- *The domains have been online within last three months;*
- *The domains have been reviewed and found to fulfill the above criteria by two independent countries/agencies or more.*

A global police operation was coordinated in 2016-2017, and INTERPOL made the following statement:

"LYON, France – An operation into the exchange of child sexual abuse material via mobile applications has led to 38 arrests in Latin America and Europe.

Operation Tantalio, launched by the Spanish National Police and coordinated by INTERPOL and Europol, saw police across 15 countries in Central and South America and Europe target individuals using the messaging application WhatsApp to exchange abuse images and videos.

The investigations began in 2016 when the Spanish National Police identified dozens of WhatsApp message-sharing groups which were circulating child abuse material and traced the mobile phone numbers used in order to identify individuals involved, as well as those suspected of producing the abuse material.

3.3. VIRTUAL GLOBAL TASK FORCE (VGT)

Another initiative is an Australian based Virtual Taskforce, an alliance of international law enforcement agencies and private sector partners.

The Virtual Global Taskforce (VGT) seeks to build an effective, international partnership of law enforcement agencies from currently 13 countries around the world and 19 private sector partners, to help protect children from online child abuse and other forms of transnational child sexual exploitation. The mission is to make the Internet a safer place, to identify, locate and help children at risk, and to hold perpetrators appropriately to account.

The Europol European Cybercrime Centre (EC3) has in 2015 produced a report, "The Child Sexual Exploitation Environment Scan" for the VGT.

3.4. ICMEC

The International Centre for Missing & Exploited Children (ICMEC)) works around the world to advance child protection and safeguard children from abduction, sexual abuse and exploitation.

It has the headquarter in USA, and offices in Brazil and Singapore. It has an extensive network of public and private sector partners.

ICMEC has published guidelines in the report "Child Pornography: Model Legislation & Global Review".

4. A Proposal for a United Nations Treaty on combating online child sexual abuse

The model legal framework for a proposal may be the Directive 2011/93/EU of the European Parliament and of the Council of December 13, 2011, on combating the sexual abuse and sexual exploitation of children and child pornography.

INTERPOL guidelines are also references.

Standards for substantive criminal offences are not included, and is left to each State to decide based on their tradition and culture.

4.1. Subject matter

This treaty or agreement establishes minimum rules concerning preventing websites containing online child sexual abuse.

It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof.

4.2. Definitions

Online child sexual abuse means:

- *any material that visually depicts a child engaged in real or simulated sexually explicit conduct;*
- *any depiction of the sexual organs of a child for primarily sexual purposes, and exploited with or without the child's knowledge;*
- *any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes;*
- *realistic images of a child engaged in sexually explicit conduct, or realistic images of the sexual organs of a child, for primarily sexual purposes;*
- *a live exhibition aimed at an audience, including by means of information and communication technology, of:*
 - *a child engaged in real or simulated sexually explicit conduct; or*
 - *the sexual organs of a child for primarily sexual purposes;*

4.3. Investigation

States shall take the necessary measures to ensure that effective investigative tools are available to persons, units or services responsible for investigating online child sexual abuse offences.

Necessary measures shall be established to enable investigative units or services to attempt to identify the victims of the offences, in particular by analysing online child sexual abuse material transmitted or made available by information and communication technology.

States that have access blocking systems in place, may share all information on updated lists between them, and check the content according to national legislation.

4.4. Prevention

States shall take appropriate measures to ensure effective intervention programmes to prevent or prohibit the dissemination of material advertising online child sexual abuses.

States shall take appropriate preventive actions to detect, disrupt, and dismantle networks, organisations, or structures used for the production, distribution of online child sexual abuse, and to detect offenders, identify children and stop material.

States shall take appropriate measures to reduce the demand that fosters all forms of sexual exploitation of children, such as information and awareness-raising campaigns, research and education programmes.

4.5. Measures against websites containing or disseminating online child sexual abuse

- *1) Member States shall take the necessary measures to ensure the prompt removal of webpages containing or disseminating online child sexual abuse hosted in their territory and to endeavour to obtain the removal of such pages hosted outside their territory.*
- *2) Member States may take measures to block access to webpages containing or disseminating online child sexual abuse towards the Internet users in their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. These safeguards shall also include the possibility of judicial redress.*

4.6. Reporting

States shall annually submit a report to the United Nations institution, assessing the extent to which States have taken the necessary measures in order to comply with this treaty or agreement, accompanied if necessary by legislative proposals.

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