

A proposal for a UN Treaty on combating online child sexual abuse

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for the future of youth empowerment online.”*

by

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1. Introduction

I have in many years been working on *A proposal for a UN Treaty on combating online child sexual abuse*.¹

The last edition was presented at an UNODC Conference *Effective Responses to Online Child Sexual Exploitation in Southeast Asia* in Bangkok in October 2017.

My background is as a Chief Judge, and the Chairman of the High-level Experts Group (HLEG) that was established by ITU in 2007-2008 as a part of the Global Cybersecurity Agenda (GCA) project.

2. The United Nations background

2.1. United Nations Convention on the Rights of the Child of 1989.

The child’s best interests must be the primary consideration when carrying out any measures to combat these offences in accordance with the United Nations Convention on the Rights of the Child of 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”.

The 2000 Optional Protocol to this Convention, included the sale of children, child prostitution and child pornography.

¹ see www.cybercrimelaw.net

2.2. A United Nations General Assembly Resolution of 2007.

This resolution 16/2 of April 2007 was adopted as *Effective crime prevention and criminal justice responses to combat sexual exploitation of children*.

2.3. The Child Online Protection (COP)

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 and was endorsed by the UN Secretary-General, Heads of States, Ministers, and heads of international organizations from around the world.

The last meeting was held on January 23, 2018 in Geneva.

2.4. A United Nations Initiative

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 2018 in my opinion a comprehensive United Nations approach on the prevention of such online abuses.

3. Model legal frameworks

3.1. Council of Europe Convention on Cybercrime of 2001.

The Convention Article 9² includes the producing, offering or making available, distributing or transmitting, procuring, and possessing, child pornography 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.

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

This Convention is an important step in the process of enhancing international cooperation. Ratifications have been made by 42 European countries, and 5 countries have only signed the Convention.

3.3. Directive from the European Parliament and of the Council of December 13, 2011 on combating the sexual abuse and sexual exploitation of children and child pornography.

This Directive³ may be the best model legal framework for a proposal on a UN Treaty on combating online child sexual abuse.

² See <http://conventions.coe.int>

³ Directive 2011/93/EU of the European Parliament and of the Council of December 13, 2011

3.4. INTERPOL

Important initiative was launched in 2004 by the work of the CIRCAMP (COSPOL Internet Related Child Abusive Material Project) network. COSPOL is an abbreviation for: Comprehensive Operational Strategic Planning for the Police. CIRCAMP was organized by Norway and United Kingdom, and had 14 national police forces as members in addition operational support from Europol and INTERPOL. CIRCAMP was a European police collaboration project in which access blocking is promoted as a crime prevention tool.

INTERPOL as a member of the CIRCAMP, provided and updated the national offices of INTERPOL around the world with a Worst of List of domains (IWOL) that was introduced in 2010. The criteria of being on IWOL 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 sexually exploitative situations are (or appear to be) younger than 13 years of age;*
- *The abuses are considered severe by depicting sexual contact or focus on the genital or anal region of the child;*
- *The domains have been online within the last three months;*
- *The domains have been reviewed and found to fulfill the above criteria by two independent countries/agencies or more.*

INTERPOL also included a service for Access Service Providers (ASP) that was willing to participate in reducing the availability of such material on Internet.⁴ Participation is free of charge and completely voluntary. The primary aims was displaying a STOP page for a user accessing a web site with child abusive content.

4. The UN Treaty Proposal

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

The most important preventive effort must be to deliberately hinder access to child abuse material on the Internet, and prevent accidental access to this illegal and harmful content. All nations must take appropriate preventive actions to detect, disrupt, and dismantle networks, organizations, or structures used for the production, distribution of child abusive files, and to detect offenders, identify children and stop material.

The access blocking must purely be a preventive effort, and should not open for investigations against persons. The IP-address of the Internet users may be removed from the logs, so they contain no identifying information.

The nature of the Internet makes circumvention of any blocking system possible for technically skilled people, but this does not undermine the preventive importance of the blocking or filtering.

⁴ See <http://www.interpol.int/Crime-areas/Crimes-against-children/Access-blocking>

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

The Treaty proposal may include as follows:

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

State 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.

Thank you for your attention.