

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

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“There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstances.”

Benjamin B. Ferencz, Former US Prosecutor

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

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by Chief Judge Stein Schjolberg (Ret.)
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Introduction

Recalling the 1989 United Nations Convention on the Rights of the Child. Online child sexual abuse constitutes serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being.

Noting that Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse.

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

Noting that online child sexual abuse are increasing and spreading through the use of new technology and the Internet, and require a comprehensive approach on the prevention of such abuses.

Recognizing with appreciation the work on the CIRCAMP (Cospol Internet Related Child Abusive Material Project) network.

Recognizing with appreciation the work of INTERPOL providing and updating the national offices of INTERPOL with a Worst of list of domains (IWOL), including a service for Access Service Providers (ASP).

Recalling that important initiatives was taken by the work on the CIRCAMP (COSPOL Internet Related Child Abusive Material Project) network that was launched in 2004. 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. 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, identify children and stop abuses.”* Another initiative was an Australian based Virtual Task Force, an alliance of international law enforcement agencies and private sector partners.

Recalling the General Assembly Resolution that was adopted in 2007: CCPCJ 2007 resolution 16/2 of April 2007 “Effective crime prevention and criminal justice responses to combat sexual exploitation of children”.

Noting that 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.

Noting that 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 the Web. Participation is free of charge on completely voluntary.

The criteria of being to 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.*

Recognizing with appreciation 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, and replacing Council Framework Decision 2004/68/JHA.

The model legal framework for this proposal is the Directive 2011/92/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. Standards for substantive criminal offences are not included, and is left to each State to decide based on their tradition and culture.

INTERPOL guidelines are also references.

Article 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.

Article 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; o*
 - *the sexual organs of a child for primarily sexual purposes;*

Article 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.

Article 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.

Article 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.*

Article 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.