

REGIONAL AND INTERNATIONAL APPROACHES

ITU, ICB4PAC

03.03.2011, Vanuatu

Prof. Dr. Marco Gercke, Director Cybercrime Research Institute

VARIETY OF APPROACHES

- The development of a legal framework addressing the challenges of Cybercrime is not limited to national approaches but includes regional and international approaches
- International approaches are important to harmonise Cybercrime and provide the basis for international cooperation
- Regional approaches are able to address issues where consent can be reached in a region but not on the global level

VARIETY OF APPROACHES

- Despite the importance of harmonisation the differences in the extent of criminalisation (especially with regard to illegal content) it is very likely that the number of issues covered by regional and international approaches will be limited

COMMONWEALTH OF NATIONS

- The Commonwealth of Nations is a voluntary association of sovereign states
- Currently 53 associated states
- In 2002 the Commonwealth presented a model law on Cybercrime that provides a legal framework to address Cybercrime
- The model law was intentionally drafted in accordance with the Convention on Cybercrime



Picture removed in print version
Bild zur Druckoptimierung entfernt



COMMONWEALTH MEMBER STATES

COMMONWEALTH OF NATIONS

- In addition to substantive criminal law and procedural law the Commonwealth also discussed the importance of digital evidence
- Without admissibility of digital evidence courts are in most cases unable to sentence offenders
- In 2002 Commonwealth therefore presented a model law on digital evidence



Picture removed in print version
Bild zur Druckoptimierung entfernt



COMMONWEALTH MEMBER STATES

ECONOMIC COMMUNITY OF WEST AFR.

- The Economic Community of West African States is a regional group of west African Countries
- Founded in 1975 it has currently fifteen member states
- In 2009 ECOWAS adopted the Directive on Fighting Cybercrime in ECOWAS that provides a legal framework for the member states
- Directive includes substantive criminal law as well as procedural law



Picture removed in print version
Bild zur Druckoptimierung entfernt



ECOWAS MEMBER STATES

EAST AFRICAN COMMUNITY

- 5 Member states (Kenya, Uganda, Tanzania, Burundi, Rwanda)
- Within the framework of an update of ICT legislation (EAC Legal Framework for Cyberlaws) EAS also addressed the issues of Cybercrime
- Provisions dealing with the criminalisation of certain conduct became part of the draft legislation



Picture removed in print version
Bild zur Druckoptimierung entfernt



EAC MEMBER STATES

EUROPEAN UNION

- The European Union is a political Union of 27 member states
- One of the mandate of the EU is to harmonise legislation in selected areas
- It has adopted several Framework Decision and Directives to harmonise the legislation with regard to Cybercrime
- The 27 member states are obliged to implement the legislation within the given time period

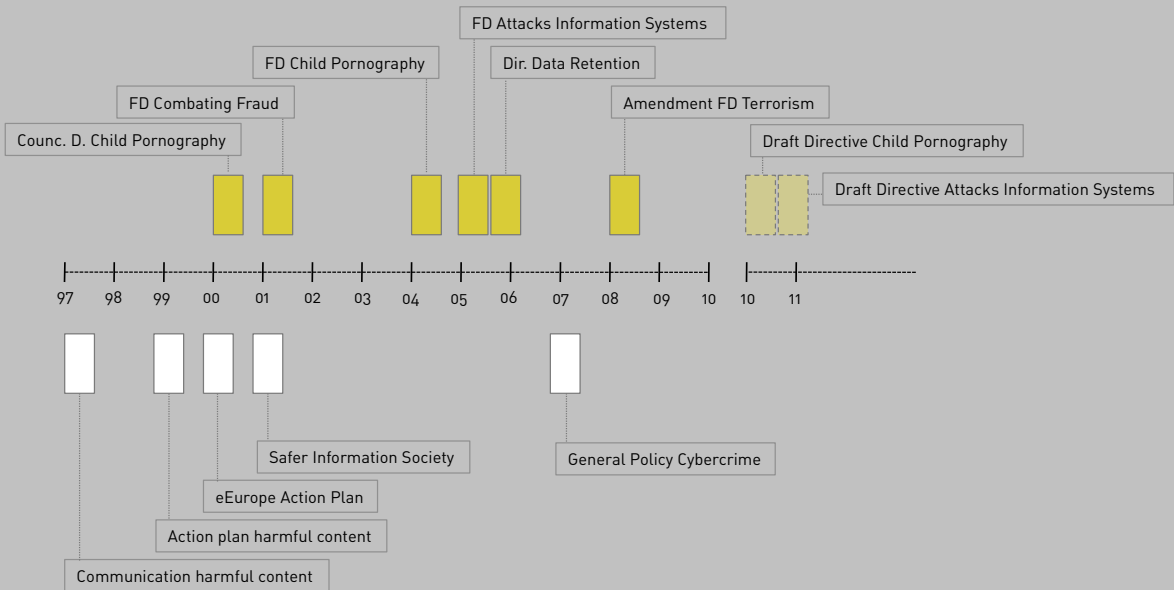


Picture removed in print version
Bild zur Druckoptimierung entfernt



EUROPEAN UNION

EUROPEAN COMMUNITY / UNION



ORGANIZATION OF AMERICAN STATES

- Organization of American States (OAS) is an international organisation
- 34 member states (2 out of the 25 independent states of the Americas are suspended)
- OAS adopted a number of recommendations but did until now not undertake approaches to harmonise legislation of the member states



Picture removed in print version
Bild zur Druckoptimierung entfernt



ORGANIZATION OF AMERICAN STATES

UNITED NATIONS

- United Nations Organisation is an international organisation (192 member states)
- In 1990 the UN GA adopted a resolution dealing with computer crime legislation
- In 2000 the UN GA adopted a resolution on combating the criminal misuse of information technology
- In 2002 the UN GA adopted a second resolution on the criminal misuse of information technology



Picture removed in print version
Bild zur Druckoptimierung entfernt



UNITED NATIONS ORGANISATION

UNITED NATIONS

- In 2010 the UN Crime Congress strengthened the UN's ability to respond to Cybercrime (capacity building and evaluation of a global legal response)
- Capacity building mandate
- Establishment of a working group
- Consideration of undertaking a comprehensive study of the problem of Cybercrime



2010 Salvador Declaration

41. We recommend that the United Nations Office on Drugs and Crime, upon request, provide, in cooperation with Member States, relevant international organizations and the private sector, technical assistance and training to States to improve national legislation and build the capacity of national authorities, in order to deal with cybercrime, including the prevention, detection, investigation and prosecution of such crime in all its forms, and to enhance the security of computer networks.

42. We invite the Commission on Crime Prevention and Criminal Justice to consider convening an open-ended intergovernmental expert group to conduct a comprehensive study of the problem of cybercrime and responses to it by Member States, the international community and the private sector, including the exchange of information on national legislation, best practices, technical assistance and international cooperation, with a view to examining options to strengthen existing and to propose new national and international legal or other responses to cybercrime.

UNITED NATIONS

- In 2003 the UN addressed Cybersecurity with a specific resolution (A/RES/57/239) that highlights the ability to address criminal abuse of information technology
- In 2010 the UN GA adopted another resolution on Cybersecurity
- An annex includes a voluntary self-assessment tool
- One aspect of the self assessment is related to Cybercrime legislation

A/RES/64/211

13. Review and update legal authorities (including those related to cybercrime, privacy, data protection, commercial law, digital signatures and encryption) that may be outdated or obsolete as a result of the rapid uptake of and dependence upon new information and communications technologies, and use regional and international conventions, arrangements and precedents in these reviews. Ascertain whether your country has developed necessary legislation for the investigation and prosecution of cybercrime, noting existing frameworks, for example, General Assembly resolutions 55/63 and 56/121 on combating the criminal misuse of information technologies, and regional initiatives, including the Council of Europe Convention on Cybercrime.

REASON FOR AN INCREASE OF GLOBAL APPROACHES

COUNCIL OF EUROPE

- Council of Europe is an international organisation focusing on the European integration
- 47 member states
- Convention on Cybercrime (2001)
- First addition protocol to the Convention on Cybercrime (2003)
- Convention on the protection of children against sexual exploitation and sexual abuse (2007)



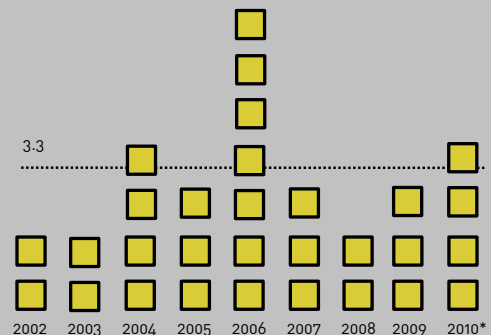
Picture removed in print version
Bild zur Druckoptimierung entfernt



COUNCIL OF EUROPE

RATIFICATION PROCESS

- 30 countries ratified the Convention on Cybercrime
- Just one country (United States) is not member of the Council of Europe
- No mandatory evaluation of the ratification
- 16 countries have not ratified it in the last 9 years



USE OF THE CONVENTION

- Convention on Cybercrime was signed by 46 states
- The Council of Europe recently published in two official documents that more than 100 jurisdictions around the world have either acceded/sought accession to, or have based their national legislation on this Convention
- However, the Council of Europe neither specifies the number nor provides a list of the countries. This hinders a verification as well as a debate with the scientific community



Picture removed in print version
Bild zur Druckoptimierung entfernt



COUNCIL OF EUROPE

USE OF THE CONVENTION

- In addition the Council of Europe does not verify if the countries reported to have used the Convention did only implement single provisions as guideline or drafted major part of their legislation in accordance with the instrument
- Finally the Council of Europe does not specify on which scientific basis it determines if a country used the Convention (similar legislation, reference to the Convention in an official document, expert statement,)



Picture removed in print version
Bild zur Druckoptimierung entfernt



COUNCIL OF EUROPE

REVIEW

- Despite the technological developments and the changing criminal environment the Convention was not changed in the last 10 years
- This is especially relevant with regard to procedural law as law enforcement agencies need sophisticated investigation instruments to address recent challenges that are not contained in the Convention
- It was not drafted for small developing countries