COUNCIL OF EUROPE

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Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems

Strasbourg, 28.I.2003

The member States of the Council of Europe and the other States Parties to the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001, signatory hereto;

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Recalling that all human beings are born free and equal in dignity and rights;

Stressing the need to secure a full and effective implementation of all human rights without any discrimination or distinction, as enshrined in European and other international instruments;

Convinced that acts of a racist and xenophobic nature constitute a violation of human rights and a threat to the rule of law and democratic stability;

Considering that national and international law need to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems;

Aware of the fact that propaganda to such acts is often subject to criminalisation in national legislation;

Having regard to the Convention on Cybercrime, which provides for modern and flexible means of international co-operation and convinced of the need to harmonise substantive law provisions concerning the fight against racist and xenophobic propaganda;

Aware that computer systems offer an unprecedented means of facilitating freedom of expression and communication around the globe;

Recognising that freedom of expression constitutes one of the essential foundations of a democratic society, and is one of the basic conditions for its progress and for the development of every human being;

Concerned, however, by the risk of misuse or abuse of such computer systems to disseminate racist and xenophobic propaganda;

Mindful of the need to ensure a proper balance between freedom of expression and an effective fight against acts of a racist and xenophobic nature;

Recognising that this Protocol is not intended to affect established principles relating to freedom of expression in national legal systems;

Taking into account the relevant international legal instruments in this field, and in particular the Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocol No. 12 concerning the general prohibition of discrimination, the existing Council of Europe conventions on co-operation in the penal field, in particular the Convention on Cybercrime, the United Nations International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, the European Union Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia;

Welcoming the recent developments which further advance international understanding and co-operation in combating cybercrime and racism and xenophobia;

Having regard to the Action Plan adopted by the Heads of State and Government of the Council of Europe on the occasion of their Second Summit (Strasbourg, 10-11 October 1997) to seek common responses to the developments of the new technologies based on the standards and values of the Council of Europe;

Have agreed as follows:

Chapter I – Common provisions

Article 1 – Purpose

The purpose of this Protocol is to supplement, as between the Parties to the Protocol, the provisions of the Convention on Cybercrime, opened for signature in Budapest on 23 November 2001 (hereinafter referred to as "the Convention"), as regards the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Article 2 – Definition

1 For the purposes of this Protocol:

"*racist and xenophobic material*" means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

2 The terms and expressions used in this Protocol shall be interpreted in the same manner as they are interpreted under the Convention.

Chapter II – Measures to be taken at national level

Article 3 – Dissemination of racist and xenophobic material through computer systems

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.

2 A Party may reserve the right not to attach criminal liability to conduct as defined by paragraph 1 of this article, where the material, as defined in Article 2, paragraph 1, advocates, promotes or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available.

3 Notwithstanding paragraph 2 of this article, a Party may reserve the right not to apply paragraph 1 to those cases of discrimination for which, due to established principles in its national legal system concerning freedom of expression, it cannot provide for effective remedies as referred to in the said paragraph 2.

Article 4 – Racist and xenophobic motivated threat

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.

Article 5 – Racist and xenophobic motivated insult

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:

insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

2 A Party may either:

a require that the offence referred to in paragraph 1 of this article has the effect that the person or group of persons referred to in paragraph 1 is exposed to hatred, contempt or ridicule; or

b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 6 – Denial, gross minimisation, approval or justification of genocide or crimes against humanity

1 Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right:

distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

2 A Party may either

a require that the denial or the gross minimisation referred to in paragraph 1 of this article is committed with the intent to incite hatred, discrimination or violence against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors, or otherwise

b reserve the right not to apply, in whole or in part, paragraph 1 of this article.

Article 7 – Aiding and abetting

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, aiding or abetting the commission of any of the offences established in accordance with this Protocol, with intent that such offence be committed.

Chapter III – Relations between the Convention and this Protocol

Article 8 – Relations between the Convention and this Protocol

1 Articles 1, 12, 13, 22, 41, 44, 45 and 46 of the Convention shall apply, *mutatis mutandis*, to this Protocol.

2 The Parties shall extend the scope of application of the measures defined in Articles 14 to 21 and Articles 23 to 35 of the Convention, to Articles 2 to 7 of this Protocol.

Chapter IV – Final provisions

Article 9 – Expression of consent to be bound

1 This Protocol shall be open for signature by the States which have signed the Convention, which may express their consent to be bound by either:

a signature without reservation as to ratification, acceptance or approval; or

b subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2 A State may not sign this Protocol without reservation as to ratification, acceptance or approval, or deposit an instrument of ratification, acceptance or approval, unless it has already deposited or simultaneously deposits an instrument of ratification, acceptance or approval of the Convention.

3 The instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 10 – Entry into force

1 This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which five States have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 9.

2 In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of its signature without reservation as to ratification, acceptance or approval or deposit of its instrument of ratification, acceptance or approval.

Article 11 – Accession

1 After the entry into force of this Protocol, any State which has acceded to the Convention may also accede to the Protocol.

2 Accession shall be effected by the deposit with the Secretary General of the Council of Europe of an instrument of accession which shall take effect on the first day of the month following the expiration of a period of three months after the date of its deposit.

Article 12 – Reservations and declarations

1 Reservations and declarations made by a Party to a provision of the Convention shall be applicable also to this Protocol, unless that Party declares otherwise at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession.

2 By a written notification addressed to the Secretary General of the Council of Europe, any Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the reservation(s) provided for in Articles 3, 5 and 6 of this Protocol. At the same time, a Party may avail itself, with respect to the provisions of this Protocol, of the reservation(s) provided for in Article 22, paragraph 2, and Article 41, paragraph 1, of the Convention, irrespective of the implementation made by that Party under the Convention. No other reservations may be made.

3 By a written notification addressed to the Secretary General of the Council of Europe, any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of the possibility of requiring additional elements as provided for in Article 5, paragraph 2.a, and Article 6, paragraph 2.a, of this Protocol.

Article 13 – Status and withdrawal of reservations

1 A Party that has made a reservation in accordance with Article 12 above shall withdraw such reservation, in whole or in part, as soon as circumstances so permit. Such withdrawal shall take effect on the date of receipt of a notification addressed to the Secretary General of the Council of Europe. If the notification states that the withdrawal of a reservation is to take effect on a date specified therein, and such date is later than the date on which the notification is received by the Secretary General, the withdrawal shall take effect on such a later date.

2 The Secretary General of the Council of Europe may periodically enquire with Parties that have made one or more reservations in accordance with Article 12 as to the prospects for withdrawing such reservation(s).

Article 14 – Territorial application

1 Any Party may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Protocol shall apply.

2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 15 – Denunciation

1 Any Party may, at any time, denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

Article 16 – Notification

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the non-member States which have participated in the elaboration of this Protocol as well as any State which has acceded to, or has been invited to accede to, this Protocol of:

a any signature;

b the deposit of any instrument of ratification, acceptance, approval or accession;

c any date of entry into force of this Protocol in accordance with its Articles 9, 10 and 11;

d any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Strasbourg, this 28th day of January 2003, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Protocol, and to any State invited to accede to it.