

## EVOLUTION OF THE INTERNATIONAL REGULATIONS REGARDING CYBERCRIME

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### Abstract

*By binding global computers networks, the issue of cybercrime acquired the features of cross-border criminality, becoming a global problem, whose settlement got the attention of regional and international organizations.*

*Because computer crimes go beyond national borders, without the criminals or the goods resulting from the crime necessarily needing to cross such limits as well, the question "who should investigate such deeds?" requires a carefully analysed answer.*

*The problem of multiple jurisdictions that might interfere with the investigation of such cybercrimes and the acknowledgement that national laws are very different, many of them lacking the specific provisions regarding cybercrime (in the early '80s), triggered, especially within the international organizations, debates regarding this phenomenon and the creation of efficient combat instruments.*

**Keywords:** global computers networks, multiple jurisdictions, cybercrime, international organizations

Within the international organizations various bodies coordinated and performed legislative harmonization activities against cybercrime. Besides the European Union, the Council of Europe, the G8 group (group of the largest industrialized states of the world plus Russia), OECD (Organization for Economic Co-operation and Development), Interpol and the United Nations Organization (UN) have been actively involved (Sieber 2007).

According to the specialized authors (Schjolberg 2007), the first discussion among cybercrime specialists in Europe took place in 1976 on the occasion of a conference organized under the aegis of the Council of Europe, namely the 12<sup>th</sup> Conference on the criminological aspects of economic crimes, held in Strasbourg in November 1976, when a new series of crimes, including fraud, was introduced.

### 1. INTERPOL

The first international organization that handled the cybercrime has been, not at all surprisingly, the INTERPOL. As a cooperation organization between national police forces, the association was established in 1923 at

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Vienna, under the name of the International Criminal Police Commission, its basis being laid with the reunion of the national police forces from 16 states at Monaco (1914) (Troneci 2001: 15).

In 2007, Interpol had 186 member states. The name of INTERPOL has been used as of 1956 and Romania has been present in this association ever since its establishment in 1914.

In 1979, INTERPOL discussed for the first time the issue of cybercrime during a symposium regarding fraud (The Third Interpol Symposium, Paris, 1979). Two years later, in 1981, on the occasion of another Interpol Conference, The First Interpol Training Seminar for Investigators of Computer Crime, also held in Paris, the member states presented reviews of the criminal laws and incriminations specific to computer-related crimes in their national law, legislative shortages and a series of issues in the enforcement of the existing law texts being identified.

The Interpol held its first conference on cybercrime at Lyon in 1995. On this occasion, the document that substantiated the conference works recommended that the computer-related criminality be similarly approached by each member state and in Africa, America and Asia.

In 2000, Raymond Kendall, Interpol's Secretary General, in a speech held during the Global Security Imperative conference (London, October 2000) said about cybercrime: "*We weren't prepared for the explosion of the use of the internet and the way the criminal fraternity understood they could use it as yet another tool to commit crime, especially fraud, much more quickly, and therefore with much less risk of detection*" (McCue 2000).

During the 6<sup>th</sup> *International Conference on cybercrime* held by the INTERPOL at Cairo (13-15 April 2005), the participants adopted a Resolution whereby they recommend a series of measures to fight this type of crime, among which the impulse to adopt new common procedural rules, the *European Convention of Cybercrime* (2001) offering the required legal framework, the strengthening of the cooperation with the supranational and national bodies, the creation of a common database for computer-related crimes.

In 2007, among Interpol's top 5 priorities was the *Financial and new high-tech crimes* (INTERPOL website, 2007) within which a separate office operates, specialized in Information Technology Crime - ITC).

## **2. The Organization for Economic Cooperation and Development (OECD).**

O.E.C.D.<sup>21</sup>, decided at Paris in 1983 to appoint a committee of experts to analyse the issue of computer-related crimes and the need to

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<sup>21</sup> The predecessor of O.E.C.D was O.E.E.C (Organisation for European Economic Cooperation) established in 1947 for the administration of the Canadian and American

modify criminal laws within this meaning. This committee completed its activity in 1986 by creating a document called "Computer-related crime - analyses of the legislative policies within the O.E.C.D.", where two crimes concerning the modification or erasure of computer data had been clearly defined.

In 1996 the French and Belgian governments proposed to O.E.C.D to adopt an agreement regarding the international cooperation on Internet (International Cooperation Carta on Internet), a document setting forth, among others, four principles of judiciary cooperation and between the national police forces of the member states.

Within the *O.E.C.D. Directorate for Science, Technology and Industry* a special department was created, called *Committee on Information, Communications and Computer Policy (ICCP)* whose purpose was to determine the common policies required to maximize the social and economic benefits of the informational society.

To this effect, the workshop organized under the aegis of the ICCP at Paris on 8.03.2006 called "The future of Internet" brought together politicians, scholars, representatives of the private sector and civil society to discuss about shaping the Internet and about the measures that had to be adopted (technically, legislatively, economically) in order to improve and build the trust in the activities performed on the Internet.

### **3. Council of Europe.**

The first cybercrime initiatives of the Council of Europe were those established on the occasion of the 12<sup>th</sup> Conference of the Criminology Research Institutes Directors (15-17 November 1976) - The Council of Europe's Conference on criminological aspects of economic crimes. Thus, a series of computer-related crimes, including that of fraud (Schjolberg 2007) were introduced.

Other initiatives were indirectly related to the protection of private life and personal data by the signing, in 1981, of the *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data*.

In 1985, within the Council of Europe, it was decided to appoint a committee of experts to analyse the legal aspects pertaining to computer-related crimes.

The committee analysed the national legislations, debated the issue of cybercrime and completed its activity in 1989, drafting a report that was

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funds intended for the reconstruction of Europe after WWII within the Marshall Plan. It changed its name into OECD in 1961, its purpose becoming that of helping member states to reach a sustainable economic growth and to improve the living standard along with the maintenance of the states' financial stability. Today it comprises 30 member states and over 70 partner states.

adopted by the Committee of Ministers of the Council of Europe in September 1989, which took the legal form of a very important recommendation at European level – *Recommendation no. 9 from 1989*.

Without obliging the member states, this recommendation suggested to the states to consider the need to amend and complete the national criminal legislations with the computer-related crimes identified by the authors of the mentioned report.

Still within the Council of Europe, on the basis of the report issued by the Mass Media Committee, the Committee of Ministers adopted on *Recommendation no. 2 from 1988 on the measures to protect copyright and neighbouring rights and combat piracy*, regulation ruling that the authors of software programs should benefit from the copyright protection.

After Recommendation no. 9 from 1989 was adopted, in 1991 the Council of Europe decided to establish a Committee of experts to approach the issue of the procedural aspects pertaining to the investigation of computer-related crimes, finding that the specifics of the new crimes must be reflected into and instrumented by the new procedures, adapted to the computer technology.

In April 1995 this committee's report underlay the adoption by the Committee of Ministers of Recommendation no. 13 from 1995 *regarding the criminal procedure issues related to information technology*.

The three aforementioned recommendations created the necessary prerequisites for the adoption of a European convention – an instrument bearing a higher legal force, capable to bind the creation or levelling of national legislations in the field of cybercrime combat.

As Universitæan Würzburg from Bavaria (Germany) had organized several international conferences on cybercrime topics, analysing national legislations and proposing legislative amendments, the European Commission decided in 1995 that this university, through its specialists, should perform, on the basis of a research agreement, a survey whose purpose was *“to provide to the European Commission updated information on the legal aspects regarding computer-related crimes, establishing the required connection with the development of the informational society”* (Sieber, 2007).

The survey was achieved in the period October 1996 – January 1998 and underlay the adoption by the Council of Europe of the European Convention on cybercrime at Budapest on 23.11.2001.

Signatory of the convention, Romania ratified it only on 1.09.2004 further to the adoption of Law no. 64/2004, for the ratification of the Convention of the Council of Europe on cybercrime.

Although a regional instrument elaborated within the Council of Europe ever since its elaboration, the European Convention on cybercrime asserted not only its European but also global impact – upon its elaboration

states outside Europe participated, namely Japan, Canada, U.S.A and South Africa.

The convention became effective, under the rules established therein, on the date of its ratification by the 5 states, among which at least 3 member states of the Council of Europe, namely on 1.07.2004, and was accompanied by an *Explanatory report*, having a very important role in the correct understanding and application of the Convention provisions (fulfilling the role of a "law enforcement regulation" from the Romanian legal system). At present the Convention has been ratified by 20 European states, other 22 European states signed the treaty but haven't yet ratified it, and from the non-member states, USA is the only one who ratified the Convention on 29.09.2006, being opposable in terms of legal force as of 01.01.2007 (ratification status is reported on 01.07.2007).

Although the United States signed the Convention being interested in minimizing or removing the administrative and jurisdictional obstacles in the investigation of computer-related crimes committed especially against American companies and institutions, one might notice that it is the state who formulated the most reserves (6) upon ratification, some of them rendering inapplicable by the USA certain important provisions of the Convention. Convention ratification by the American Senate caused vivid debates and controversies regarding its content, the obligations falling to the Americans by the approval of the treaty (McCullagh, Broache 2006; McCullagh 2005)

To the *European Convention on cybercrime* was added an Additional Protocol, ETS no.189, (adopted on 28.01.2003 at Strasbourg, France) whereby are incriminated as crimes the publication through the computer networks of any propaganda, racist or xenophobic contents, the quoted Additional protocol became effective on 01.03.2006, being ratified by 11 European states and signed by other 20 states (Canada and other 19 European states).

In the analysis of the unfolded activity made by the main international bodies (regional or global) in the field of cybercrime combat, we acknowledge that there are preoccupations to this effect in all the regions of the Earth, but the status of such bodies regarding the measures against the criminal phenomenon is different.

We could certainly assert that the European Convention on cybercrime signed at Budapest in 2001 is the only regional legal instrument setting out concrete obligations and measures for the signatory states and offers the necessary mechanisms to fight this type of criminality.

Neither of the other specified bodies managed to substantiate the prevention and combat measures into a single international legal instrument.

By reporting the activity of the regional bodies from the Asian-Pacific area and the Western Hemisphere (American states) to the specified convention – which became a model instrument, that not only the member states of the Council of Europe but also non-member states (USA, Canada, Japan and South Africa) signed, we notice the tendency to transform the European Convention on cybercrime from a regional to a global instrument, which would allow a better cooperation between states in the fight against cybercrime, given its transnational nature.

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