COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 7 January 2002

PC-RX (01) 02

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS ON THE CRIMINALISATION ACTS OF A RACIST OR XENOPHOBIC NATURE COMMITTED THROUGH COMPUTER NETWORKS
(PC-RX)

SUMMARY REPORT

of the

first meeting

(Strasbourg, 17 – 18 December 2001)

Memorandum established by the Secretariat (DG I – Legal Affairs)

I. Introduction and adoption of the draft agenda

1. Committee PC-RX held its first meeting from 17 to 18 December 2001. By unanimous vote it elected Professor Henrik W. K. Kaspersen (NL) chairman of the Committee and adopted the draft Agenda. The Agenda is attached to the present report at Appendix I and the list of participants at Appendix II .

2. The Secretariat informed the Committee that Mr Gianluca Esposito will be acting as the Secretary to the Committee, but unfortunately, he could not be present at the first meeting. Mr Peter Csonka will therefore replace him on this occasion and will be co-Secretary in the future.

3. The Chairman invited delegations to introduce themselves and make comments on the preliminary draft document, prepared by Mr Esposito and circulated by the Secretariat prior to the meeting. Several experts (F, GR) having introduced themselves, requested the distribution of additional documents (ECRI, UN, etc.) for the Committee's information, which was done.

4. In their introductory statements, several experts (IRL, G, SK, GR) stressed that their domestic legislation was currently undergoing reform, while others (H, FIN, US, JPN, S) pointed to the need of striking a careful balance between the criminalisation of racist acts and the protection of freedom of speech. Many said that their laws already contained provisions criminalising hate speech as "agitation" or "discrimination against ethnic minorities" or "racist propaganda" and those in principle were applicable to the Internet as well. Equally, many experts welcomed the fact that the Secretariat had prepared a preliminary draft which they considered a useful basis for further discussions.

II. Discussion of the terms of reference

5. The Chairman recalled the genesis of the terms of reference and, in this context, the reasons why the mother convention did not contain any provision on racist content. He drew members' attention to the flexibility of the language, carefully drafted by the CDPC so as to allow adaptations of the mother convention where necessary in the future protocol. He asked members to consider how far the Committee should go when defining new criminal offences under item 4 (i.) of the terms of reference and whether under item 4 (ii.), it should confine itself to applying or referring to other provisions of the mother convention. He reminded the Committee, though, that the protocol could only address on-line racist and xenophobic content since "computer networks" were the sole medium of distribution mentioned by the terms of reference.

6. Concerning item 4 (i.), it was suggested that the "apology of war crimes" and the "negation of the Holocaust" should also be criminalised, while some expressed doubts as to the criminalisation of the possession of racist or xenophobic material. In this context, the French experts submitted a draft list of definitions for discussion. Another expert wondered whether the terms "computer networks" were intended to have a different meaning than "computer system", an agreed term used by the mother convention, and whether those included stand-alone computers The Chairman clarified that the possession of child pornography was criminalised by the mother convention and a priori he saw no reason why the possession of racist material would not be

discussed when preparing the protocol. As far as the separate paper submitted by the French experts is concerned, it was agreed that proposals based on it would be discussed once the translation becomes available. The Chairman thought that "computer networks" and "computer system" should have the same meaning and recommended using in the future only the latter terminology.

7. Concerning item 4 (ii.), he raised, on behalf of his Government, the question of whether the protocol should not give consideration to entrusting ISPs, on a voluntary basis, with the reporting of racist or xenophobic content to a designated contact point (i.e. a sort of "watchdog function"). The Committee agreed to consider this suggestion.

III. Discussion of the Preliminary draft Protocol (PC-RX - Draft N° 1)

8. The Committee agreed that it would take the Preliminary draft Protocol (PC-RX - Draft N° 1) submitted by the Secretariat as the basis for future discussions. It also agreed to consider the draft Preamble, once it had concluded a first reading of the main text.

Article 2 – Definitions

(a.) – Racism and xenophobia

9. "Aversion" was found much too broad a term by several experts, who thought that the definition should focus on conduct, such as "advocating" discriminatory acts, rather than on feelings of dislike; if the Committee were to use "aversion", it was argued that one should differentiate between public and private expression of such feeling.

10. The US experts remarked that under their legislation, racist conduct or expression must be directed towards imminent action to reach the threshold of criminalisation. The French experts suggested defining only the "racist" or "discriminatory message", instead of "racism and xenophobia" as such. They referred to the provision criminalising the distribution, etc. of child pornography in the mother convention (Article 9), which defines the incriminated material as the representation of certain content, and does not deal with the *in abstracto* definition of "child pornography". Moreover, the definition of what is "racism" is already provided for in the existing legal texts in this area, e.g. at Article 14 of the 1966 UN Convention ("CERD"), so the PC-RX has only got to transpose this definition into a computer environment. In addition, the Committee' terms of reference require it to define crimes related to racism and not racism itself.

11. The Chairman recalled that the definition of what is "racism and xenophobia" or "racist and xenophobic material" will eventually determine the scope of the offences established by the protocol. He asked members whether they preferred to have a single definition in the protocol, or simply using the definition in CERD. The representative of the European Commission pointed out that the definition of racism and xenophobia in the preliminary draft was largely inspired by the Commission's draft framework decision, but that, in some respects, it went further. She supported the idea of working out a single definition in the draft protocol. Several other experts also expressed support for such a course of action, but wished to eliminate certain elements, such as "sex", "language" or "political or other opinion", which they thought were alien to the

concept of "racism" or "xenophobia". Others advocated taking the UN definition, at least as the basis of the single definition, while recalling that the UN text addresses "racial discrimination" and not "racism" as such.

12. The correct meaning of "xenophobia" was debated at length: for some, it should be understood as "fear of foreigners or any other group", for others it is translated as "hatred against foreigners", again others explained it, on the basis of ancient Greek, as as the feeling or attitude based on fear from something different than what is usually accepted. The Chairman concluded that the general sense of the group was to interpret it as an attitude rather than a conduct. The French experts repeated their opposition to any definition based on feelings or thoughts: these subjective elements must materialise against someone, otherwise they cannot be prosecuted. The future protocol's definition should therefore be based on that of the CERD, but extended to xenophobia, since this definition is universally accepted and the elements of racism and xenophobia are similar. Applying this concept, the proposed French definitions repeat the CERD elements, but only contain conduct. Several experts supported this position so that the Chairman, when summarising the debate, said that the Group's decision was to:

- deal with conduct, not with feelings/belief/aversion;
- use existing definitions (UN, EU) as far as possible;
- invite the Secretariat to prepare an alternative draft for discussion on that basis.

13. Following this, the Chair and the Secretariat submitted Misc. N° 1 for further debate. Several experts criticised that the definition was open-ended with the inclusion of the words "such as". One expert wondered whether the reference to "gender" and "opinion" was included because of the joint definition of racism and xenophobia, which the drafters confirmed. Other experts wanted to include an additional element in relation to violence, i.e. "imminent". The French experts welcomed the new draft, but suggested adding more details on the nature of racist or xenophobic "material", such as "any message or any other representation expressing ideas concerning supremacy or hatred and inciting to discrimination or acts of violence, based on the fact that someone is belonging or not to a nation, colour, race, etc.". The US experts were reluctant to go down this path, since the definition was related to ideas and thus close to the borderline of thought-control v. freedom of expression. They proposed using a different approach for defining computer-based racism: "using a computer system for depriving people from their social/political/human rights on the basis of gender, race, etc.". In addition, they criticised the expressions "acts of hatred" and "discrimination" because of their loose and undefined meaning. They further recommended using a formula that expresses the idea that racism is an appeal to other people to act, e.g. commit violence, on the basis of hatred, etc. (for example: "I hate green people – join us to kill green people !").

14. Other experts raised the following points:

- the definition of material is too narrow: it should address situations such as selling nazi memorabilia through web-sites, even though such memorabilia do not incite themselves to violence;

- some grounds mentioned in Misc. N° 1 should be deleted as no court would accept a case or racism on the basis of descent, political opinion, social origin, birth or other status or language;
- disputes arising from differences in political opinion should be dealt with in civil and not criminal cases;
- the possibility of including other, non-defined grounds, expressed as "such as" should be deleted from Misc. N° 1.

15. The Chairman, at this stage of the discussion, wished to eliminate those elements of the definition in Misc. N° 1, which raised problems. There was a consensus to redraft the definition by:

- Deleting the following points (used for defining racism and xenophobia): "political or other opinion", "social origin", birth or other status"
- Keeping "race", "colour", "nationality", "national or ethnic origin", "religion" and "descent"; there was no consensus on "language";
- Including one or several of the following elements of action: "inciting or likely to incite"; "provoking"; "promoting"; "advocating".

16. The US experts referred to their constitutional law, which requires an intent to incite to violence and the likelihood of violence occurring as a result of hate speech. Therefore, they wished to include in the definition a specific purpose and the proximity of violence or harm.

17. The Chairman, summing up this part of the discussion, suggested that the Secretariat should redraft Misc. N° 1 on the basis of the above agreed elements. This was endorsed by the Committee.

18. Misc. N° 1 Rev. 1 was distributed and discussed at a later stage of the meeting. The US experts welcomed the redraft, but stressed that the text should exclude the possibility of capturing material inadvertently inciting to racist acts, for example by including a purpose ("…. intended to incite ….). They also called for a change in the element of discrimination: a material should be qualified as "racist or xenophobic" only when it results in discrimination and not only when it incites to such action. In response, the Chairman clarified that the Explanatory Memorandum should take over unchanged the explanations of the CERD concerning the notion of "discrimination". The French experts expressed their dismay at the inclusion of "imminent" in relation to violence in the redraft: they thought that it should not matter whether a material calls for killing an identifiable group of people within 100 years or within 1 day – this is still racist material.

19. Misc. N° 1 Rev. 2 was then distributed. The Japanese experts stressed that they would also like to see a special purpose or intent included in the definition, as suggested by the US experts. The Chairman indicated that a footnote will be inserted to highlight this. The French experts insisted that the term "imminent" should be deleted from the text, which was supported by the Irish, South-African, German and Greek experts. They also suggested including "advocating" and "promoting", which the US experts opposed because too remote from action, from their notion of "bringing about". The Irish experts explained that their recent legislation uses "incites", but it is so difficult to prove that the racist material has such effect on someone, that they could not so far

successfully prosecute any racist crime. They would thus prefer all three acts together, i.e. "incites, provokes or advocates". The US experts requested that a footnote be included to mark their preference for maintaining the term "imminent" in the text, should the majority decide to delete it. In their view, the special intent and the term "imminent" should apply to both violence and discrimination.

20. The Chairman, summing up the discussion, noted that there was a clear divide between the US and most European experts concerning the constituent elements of racism and xenophobia. He asked members of the Committee which further elements, not yet mentioned in the text, should be included. He wondered, in particular, whether a reference to "hatred", besides violence and discrimination, should be inserted. The French, Italian, Irish and UK experts supported this, while the US experts opposed it as it brings in thought-control and thus makes the text totally unacceptable to the US.

21. The Chairman concluded that the new redraft of Misc. N° 1 would contain, for further study, these new elements and include the footnotes requested.

22. The redraft (rev. 3) was distributed at a later stage of the meeting. With some minor amendments, it was approved as appended to this report.

Article 3 – Handling racist or xenophobic material through a computer system

23. The Chairman introduced Article 3 by saying that its structure had obviously been inspired by Article 9 of the mother convention, though he wondered whether all forms of behaviour criminalised by the latter had an equivalent when applied to racist or xenophobic material. He also found that the term 'handling' in the heading of this article was too colloquial.

24. The expert from South-Africa proposed that in sub-paragraph a) 'offering' and 'making available' be alternative rather than cumulative elements ("offering or making available"). Concerning sub-paragraph d), he suggested adding a purpose (e.g. 'for the purpose of distribution'), because mere possession of racist or xenophobic material should not be criminalised. The reason to deviate from the solution regarding the possession of child pornography at Article 9 is that child pornography represents in itself a crimescene, whereas racist material does not. The US experts agreed that behaviour under Article 3 should be related to a special intent, i.e. "intent to bring about results", thus making the likelihood or immediacy of such results part of the definition. They expressed some doubts concerning the differentiation between Articles 3 and 4 and stressed that, in their opinion, what should be criminalised is any action, through a computer system, which deprives people from their lawful rights or their place in society or any other action done with such purpose.

25. The French experts said that the distribution of racist or xenophobic material should at minimum be criminalised. The Swedish expert supported the US position, whereas the Finnish expert said that possession in itself should not be criminalised because the material involved is different, i.e. less harmful. The Hungarian expert agreed that distribution should, while mere possession and production for oneself should not be ciminalised. He also noted that the behaviour to be criminalised should be an active conduct, such as inciting to violence.

26. At this stage, the Chairman noted that since experts already began discussing particular elements of the various sub-paragraphs, one should proceed one by one. He therefore invited comments first on sub-paragraph 3/a. The following comments were made on this sub-paragraph:

- 'producing' should not be criminalised if done for oneself; if the material is produced for being distributed or made public, its production should be criminalised;
- 'offering' and 'making available' should be criminalised as such.

27. The following comments were made on sub-paragraph 3/b:

- 'disseminating' is superfluous, since it is covered to a large extent by 'distributing';
- the approach of the Committee PC-CY should be kept when incriminating acts related to racism: once the material has been defined, one should list the various harmful conduct that need to be criminalised; since most of these conduct have already been precisely defined in the context of the mother convention, there is no need to redefine them; one should simply refer to and use the terminology of the mother convention; as far as racist content is concerned, it is not that obvious that the degree of harm involved substantially differs from that of child pornography.

28. The following comments were made on sub-paragraph 3/c:

- Procuring racist material for oneself should be considered as private business; if the material is collected for someone else, e.g. for distribution, it should be made criminal, in particular if the intended recipients are minors;
- There are some differences between the corresponding provision at Article 9 and 3/c, in that the issues involved in the latter are closer to constitutional law than to criminal law;
- Some content or material is *per se* "not for trade" ("hors commerce"), for example the book 'Mein Kampf'; is someone is selling such material through the Internet, this action would come under sub-paragraph 3/a, whereas the person buying it would be left unpunished if sub-paragraph 3/c were to disappear; racist material is dangerous in itself, because it offends human dignity, whether the recipient is a minor or not; therefore, one should not underestimate the harmfulness of procuring racist material even for personal use; as far as constitutional law protections are concerned, the jurisprudence of the European Court of Human Rights (ECHR) is clear: one should not benefit from the right to freedom of speech under Article 10 if racist content is involved; therefore, applications from racist or nazi groups have systematically been refused by the Court;
- Under some laws (for example in the UK), a distinction is made according to the person's intent: procuring racist material for oneself is legal, provided the person has no racist purpose; if there is such racist purpose, procuring the material for oneself becomes a crime;
- Under other laws (for example in the US), procuring racist material for oneself is fully legitimate, since it is regarded as part of the democratic process of informing oneself about extremist views; people therefore may read 'Mein Kampf' to understand those views;

- Procuring racist material for oneself should only be made criminal if it is for later distribution;
- The grounds justifying the criminalisation of the possession of child pornography do not hold with respect to racist material: the making of child pornography involves child abuse, while that of racist material does not; the possession of child pornography means belonging to an abusive network and, in the hands of paedophiles, increases the chance of re-offending, while the possession of racist material does not present such a risk;
- There is no fundamental difference between the two types of content, since both offend human dignity; every human being is entitled to have their dignity protected, so the protocol should re-affirm the protection of these fundamental values; this common feature between child pornography and racism is essential and the protocol would send the wrong signals if it criminalised only the supply and not the demand side;
- The common points between these two types of content is hardly arguable, since there are grounds justifying the possession of racist material (e.g. for studying it or for demonstrating that these views are false), but there are none for child pornography;

29. The Chairman, after a quick tour de table, noted that there was consensus to:

- create, provisionally in brackets, a separate sub-paragraph concerning "production" (3/a) and include the phrase 'for the purpose of its distribution';
- keep in brackets the sub-paragraph concerning "procuring" (3/c);
- eliminate the sub-paragraph concerning "possession" (3/d);
- interpret "making available" in sub-paragraph 3/a as including cases of sharing access to material available in one single computer.

30. The Chairman, having concluded the discussion on Article 3, asked members to make preliminary observations on the remaining provisions of the draft text. The following main comments were made:

- Article 4: this provision seems redundant, since some parts are covered by Article 3, others by Article 5; some elements, however, may need further analysis; for example 4/c, also covered by an EU Joint Action (1996), may be important from the perspective of 'procuring' (3/a);
- Article 5: one should scrutinise, after finalising Article 3 and deciding on Article 4, whether the attempt of all conduct criminalised therein also deserves also to be criminalised; this provision may not be necessary, since the mother convention also covers attempt, and aiding and abetting;
- Article 6: the same question will arise as under Article 5: repeat the relevant provisions from the mother convention or simply refer to it and indicate exceptions, as necessary ?
- Article 7: why would the fact that an offence was committed by a racist group make it punishable by a higher penalty ?
- Article 8: this is a substantial deviation from the concept of the mother convention; why restrict the exculpatory circumstances to law enforcement action ? This question should be left to national legislation; further reflection may be necessary on this provision;

- Article 9: seems acceptable.

31. The Chairman, having heard these observations, concluded that the Secretariat should:
    - revise the draft text on the basis of the above indications;
    - consult with the Treaty Office so as to determine whether the future protocol should repeat certain provisions already contained in the mother convention or simply refer to them;
    - start preparing a preliminary draft Explanatory Report to enable more rapid progress on the draft protocol.

32. The Chairman also:

    - called on experts to send their relevant legislation to the Secretariat and check the accuracy of the material distributed during the meeting (e.g. doc. ECRI (2000) 27);
    - noted that there was consensus to make the draft text of the protocol public at a very early stage of the drafting process; depending on the results of the next (2nd) meeting, planned for February 2002, the text would be made public afterwards; meanwhile, it should be kept confidential;
    - noted that the next meetings will be held as follows:

      2nd meeting: 11 – 13 February 2002;
      3rd meeting: 18 – 20 March 2002;
      4th meeting: 22 – 25 April 2002.

Appendix I

Agenda of the 1st meeting
(Strasbourg, 18 - 19 December 2001)

1. **Opening and order of business**

2. **Information from the Secretariat**

3. **Round table - review of the legislation of PC-RX member States**

4. **Discussion**

   - the terms of reference of Committee PC-RX (doc. PC-RX (01) 1)

   - the Preliminary Draft Protocol (doc. PC-RX (01) draft N° 1)

5. **Other business**

6. **Dates of the next meeting**

Appendix III

Strasbourg, 18 December 2001

Restricted
PC-RX (01)
Draft N° 2

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS ON THE CRIMINALISATION ACTS OF A RACIST OR XENOPHOBIC NATURE COMMITTED THROUGH COMPUTER NETWORKS
(PC-RX)

PRELIMINARY DRAFT[1]

of the

First Additional Protocol to the Convention on cybercrime on the criminalisation of acts of a racist or xenophobic nature through computer networks

[1] This draft reflects the changes agreed to at the first meeting of Committee PC-RX (17 – 18 December 2002). Those changes appear in bold and are underlined.

PRELIMINARY DRAFT

First Additional Protocol to the Convention on cybercrime on
the criminalisation of acts of a racist or xenophobic nature through computer networks

The member States of the Council of Europe and the other Parties to the Convention on Cyber-crime, opened for signature in Budapest on 23 November 2001, signatories to this Protocol,

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

Convinced that any act of a racist or xenophobic nature constitutes a violation of Human Rights, the Rule of Law and democratic stability, which are at the core of the Council of Europe's mission and on which democracies rest;

Considering that all human beings are born free and equal in dignity and rights and with a potential to contribute constructively to the development and the well-being of our societies;

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;

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

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

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

Concerned however by the risk that such computer networks are misused or abused to disseminate racist or xenophobic propaganda;

Convinced of the need to criminalise acts of a racist or xenophobic nature through computer networks and to increase international co-operation in this field;

Taking into account the relevant international legal instruments in this field and, in particular, the European Convention on Human Rights and, particularly, its Protocol No. 12, the existing Council of Europe conventions on co-operation in the penal field and, particularly, the Convention on Cybercrime, the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;

Welcoming the recent developments which further advance international understanding and co-operation in combating both 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 as regards the criminalisation of acts of a racist or xenophobic nature through computer networks.

Article 2 - Definitions

For the purposes of this Protocol:

a. **"Racist or xenophobic material » means any written material, any image or any other representation of thoughts or theories, which advocates, promotes, incites or is likely to incite acts of violence[2], hatred or discrimination against any individual or group of individuals, based on race, colour, religion, descent, nationality, national or ethnic origin";**

b. "racist and xenophobic group" means a structured organisation established over a period of time, of more than two persons, acting in concert to commit offences referred to in Article 3 below;

Chapter II – Measures to be taken at national level

Section 1 – Criminal offences

Article 3 – Racist and xenophobic material in a computer system

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:

a. offering **or** making available racist or xenophobic material through a computer system;

b. distributing or transmitting racist or xenophobic material through a computer system;

c. [procuring racist or xenophobic material through a computer system for oneself or for another person];

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[2] At the first meeting of Committee PC-RX (17 – 18 December 2001), the United States and Japan expressed a clear preference for the following formulation: "imminent violence…". Moreover, the United Kingdom, the United States and Japan wished to include a specific intent to incite, either in this definition or in Article 3. Finally, Italy and the United States did not endorse the inclusion of "advocates, promotes …".

d. producing racist or xenophobic material in a computer system for its distribution.

Article 4 – Expressing racist or xenophobic ideas through a computer network

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:

a. inciting violence or hatred for a racist or xenophobic purpose through computer network;

b. insulting or threatening individuals or groups for a racist or xenophobic purpose through computer network;

c. directing, supporting of or participating in activities of a racist or xenophobic group through computer network;

Article 5 – Attempt and aiding or abetting

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, aiding or abetting the commission of any of the offences established in accordance with Articles 3 and 4 of this Protocol, with intent that such offence be committed.

2. 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, an attempt to commit any of the offences established in accordance with Articles 3 and 4 of this Protocol.

Section 2 – Other measures

Article 6 – Sanctions and measures

Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offence established in accordance with Articles 3 and 4 is punishable by effective, proportionate and dissuasive sanctions, which include deprivation of liberty.

Article 7 – Aggravating circumstances

1. Each Party shall ensure that the commission of offences established in accordance with Articles 3 and 4 of this Protocol by a racist or xenophobic group is regarded as an aggravating circumstance in the determination of the penalty applicable thereof.

2. Each Party shall ensure that racist and xenophobic motivation is regarded as an aggravating circumstance in the determination of the penalty for offences other than those established in accordance with Articles 3 and 4 of this Protocol.

Article 8 – Exculpatory circumstances

Each Party shall ensure that those who commit, aid or abet the commission of, any of offences referred to in Articles 3 and 4 of this Protocol may be exempted from criminal liability where such acts are committed for law enforcement purposes.

Article 9 – Political offences[3]

Each Party shall ensure that the offences referred to in Articles 3 and 4 of this Protocol are not regarded as political offences justifying refusal to comply with requests for mutual legal assistance or extradition.

Chapter III – Final provisions

Article 10 – Expression of consent to be bound

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

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

   b. signature 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 on cybercrime.

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

Article 11 – Entry into force

1. This Protocol shall come into force on the first day of the month following the expiration of a period of three months after the date on which five member States of the Council of Europe have expressed their consent to be bound by the Protocol, in accordance with the provisions of Article 10.

2. In respect of any State which subsequently expresses its consent to be bound by it, the Protocol shall come 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 12 – Accession

[3] At the first meeting of Committee PC-RX (17 - 18 December 2001), the United States delegation indicated that in its view this provision warranted further consideration.

1. After the entry into force of this Protocol, any State which has acceded to the Convention on cybercrime 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 13 – Amendments

1. Amendments to this Protocol may be proposed by any Party, and shall be communicated by the Secretary General of the Council of Europe to the member States of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention as well as to any State which has acceded to, or has been invited to accede to, this Protocol in accordance with the provisions of Article 12.

2. Any amendment proposed by a Party shall be communicated to the European Committee on Crime Problems (CDPC), which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by the European Committee on Crime Problems (CDPC) and, following consultation with the non-member State Parties to this Convention, may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall come into force on the thirtieth day after all Parties have informed the Secretary General of their acceptance thereof.

Article 14 – Settlement of disputes

1. The European Committee on Crime Problems (CDPC) shall be kept informed regarding the interpretation and application of this Protocol.

2. In case of a dispute between Parties as to the interpretation or application of this Protocol, they shall seek a settlement of the dispute through negotiation or any other peaceful means of their choice, including submission of the dispute to the European Committee on Crime Problems (CDPC), to an arbitral tribunal whose decisions shall be binding upon the Parties, or to the International Court of Justice, as agreed upon by the Parties concerned.

Article 15 – Consultations of the Parties

1. The Parties shall, as appropriate, consult periodically with a view to facilitating:

   a. the effective use and implementation of this Protocol, including the identification of any problems thereof;

b. the exchange of information on significant legal, policy or technological developments pertaining to cybercrime, the collection of evidence in electronic form, the criminalisation of acts of a racist or xenophobic nature;

c. consideration of possible supplementation or amendment of the Protocol.

2. The European Committee on Crime Problems (CDPC) shall be kept periodically informed regarding the result of consultations referred to in paragraph 1.

3. The European Committee on Crime Problems (CDPC) shall, as appropriate, facilitate the consultations referred to in paragraph 1 and take the measures necessary to assist the Parties in their efforts to supplement or amend the Protocol. At the latest three years after the present Protocol enters into force, the European Committee on Crime Problems (CDPC) shall, in co-operation with the Parties, conduct a review of all of the Protocol's provisions and, if necessary, recommend any appropriate amendments.

4. Except where assumed by the Council of Europe, expenses incurred in carrying out the provisions of paragraph 1 shall be borne by the Parties in the manner to be determined by them.

5. The Parties shall be assisted by the Secretariat of the Council of Europe in carrying out their functions pursuant to this Article.

Article 16 – Reservations

No reservation may be made in respect of any provision of this Protocol.

Article 17 – Territorial application

1. Any State 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. 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 such declaration by the Secretary General of the Council of Europe.

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. 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 18 – 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 19 – 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 Articles 8, 9 and 10;

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 ..... , this ....., 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.

Appendix IV

PC-RX – 18.12.01
Misc. 1 Rev 4

Article 2

(b) « Racist or xenophobic material » means any written material, any image or any other representation of thoughts or theories, which advocates, promotes, incites **or is likely to incite** acts of violence[4], hatred or discrimination against any individual or group of individuals, based on race, colour, religion, descent, nationality, national or ethnic origin.

Article 2

(b) « Matériel raciste ou xénophobe » signifie tout matériel écrit, toute image ou toute autre représentation d'idées ou de théories qui préconise, promeut, incite, **ou est susceptible d'inciter,** à des actes de violence, de haine ou de discrimination contre une personne ou un groupe de personnes, fondés sur la race, la couleur, la religion, l'ascendance, la nationalité, l'origine nationale ou ethnique.

[4] At the first meeting of Committee PC-RX (17 – 18 December 2001), the United States and Japan expressed a clear preference for the following formulation: "imminent violence…". Moreover, the United Kingdom, the United States and Japan wished to include a specific intent to incite, either in this definition or in Article 3. Finally, Italy and the United States did not endorse the inclusion of "advocates, promotes …".