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**OSCE MEETING ON THE RELATIONSHIP BETWEEN RACIST,
XENOPHOBIC AND ANTI-SEMITIC PROPAGANDA ON THE
INTERNET AND HATE CRIMES**

Paris, 16 and 17 June 2004

**The struggle against racism and xenophobia on the Internet:
Action taken by the Council of Europe
by Mr. Guy De Vel, Director General for Legal Affairs of the
Council of Europe**

I should like first of all to thank the French Government and the OSCE for having given me an opportunity to speak at this very important meeting where the Council of Europe quite naturally has a role to play, a meeting that marks a sequel to the Conference on Anti-Semitism held in Berlin on 28 April this year, which had tremendous repercussions. For many years now our Organization has done its best to fight all forms of xenophobic, racist and anti-Semitic propaganda on the Internet, and it has used all the means at its disposal to do so. In so acting, the Council of Europe is at the very heart of its mission.

I am particularly happy to discuss this question here, in Paris, because in all the battles we have fought against this plague — which have yielded important documents, a point to which I shall return — the French authorities have given us strong support, and I want to take the opportunity to thank them for that.

The revolution in information technology has brought about substantial changes in our societies and will probably continue to do so in the years to come. It has greatly simplified many tasks. The new technologies have had effects of one kind or another on all forms of human activity.

Unfortunately, however, there is another side to this coin: taking advantage of the fact that a new space for communication and free exchange has been opened up, racists and negative types generally have hurled themselves into the breach.

Whereas technological, economic and commercial developments are bringing the peoples of the world closer together, racial discrimination, xenophobia and other forms of intolerance continue to exist in our societies. Racist actions inspiring revulsion in us occur very regularly, and the French Government recently, through the Prime Minister, described such acts as a hydra that would have to be fought.

The use of computers by individuals and organizations for racist purposes is not a recent phenomenon; the racists appropriated them 20 years ago, as soon as the new

technology began to appear in industry and in the universities. The principal means of communication at that time were public discussion forums (“news”) and e-mail.

With the invention of the web and its spread through the public at large the phenomenon grew. The technology lent itself well to this, because websites are characterized by ease of access and of publication. Any person who has a computer can create a site and link it with others, possibilities which did not fail to attract racist activists who had little or no access to other forms of publication (on paper) or broadcasting (radio and television).

The appearance of global communication networks such as the Internet provided them with powerful, modern means of communication through which they could spread, easily and on a large scale, racist and xenophobic ideas.

How should we react to racism, xenophobia and hate tirades on the Internet?

This is an area where international co-operation is indispensable.

There are a number of possibilities for combating this phenomenon. I will mention only two, which seem to me particularly important: first normative action, the specification of standards and rules, and secondly a pedagogical or educational approach, the provision of information. In both these areas the Council of Europe is particularly well placed to take effective action.

Normative action of the Council of Europe

In this new context the offenders are often in places quite remote from those where their actions take effect. On the other hand, domestic laws are generally applicable only within the boundaries of a particular country. Thus the adoption of appropriate international legal instruments is indispensable. The Council of Europe — I do not hesitate to say this — has done pioneer work in this area. Our Convention on Cybercrime, the only international treaty in the world in this field, together with its Additional Protocol which deals specifically with the fight against racism and xenophobia on the Internet, is aimed at meeting this challenge, while taking due account of the need to respect human rights and the rule of law in an “information society”.

The Convention on Cybercrime is a treaty signed by a large number of European countries (38) but also by the United States of America, Canada, Japan and South Africa. It will enter into force on 1 July 2004.

However, this basic text does not deal specifically with racist and xenophobic messages on the Internet. The committee of experts who drafted it could not reach consensus regarding the incrimination of infractions entailing the diffusion of racist and xenophobic propaganda on the Internet. Although many delegations, as well as the Parliamentary Assembly of the Council of Europe, favoured the idea of making this a criminal offence, others were worried because they felt that the criminalization of such acts might mean a curtailment of freedom of speech. Because of the complexity of the question, it was decided to deal with it in an Additional Protocol. At all events, the existence of provisions covering such infractions seemed to be a compelling factor for most of the members of the Council of Europe, and hence the need for the Additional Protocol.

The Protocol was opened for signature in January 2003 and remains even today the only international treaty in this field. It has two main objectives: first to harmonize material criminal law relevant to the fight against racism and xenophobia on the Internet and secondly to improve international co-operation in this area. Co-ordination of this kind will facilitate the fight against this type of crime at both the national and international level.

Anticipating offences of this kind in domestic law will help prevent the use of information technology for racist purposes in States which have no legislation of their own in this field. International co-operation (in particular extradition and mutual legal aid) will be facilitated.

The Protocol provides that the following shall be treated as criminal offences:

- (a) Spreading racist and xenophobic material through computer systems. What this means is exchanging racist and xenophobic material in a chat-room, or distributing such material in news groups or discussion forums. These are examples of how such material can be made available to the public.
- (b) Threats motivated by racist or xenophobic considerations, i.e., a form of intimidation designed to instil fear in the person to whom it is directed and make that person believe that he or she is about to become the victim of a serious criminal offence.
- (c) Insults with underlying racist or xenophobic motivation — that is any offensive expression, term of contempt or invective designed to besmirch the honour or dignity of the person at whom it is directed. Such conduct will also have the effect of exposing the person or group of persons in question to hatred, scorn or ridicule, not only in theory but in practice as well.
- (d) Denial, gross minimization, approval or justification of genocide or crimes against humanity. This is perhaps the most innovative and important provision of the Protocol.

In the course of the last few years a number of cases have been handled by national courts involving individuals who had developed, publicly, in the media and so on, ideas or theories aimed at minimizing, denying or justifying serious crimes committed in the course of the Second World War (in particular the Holocaust). Scientific research sometimes serves as a pretext for this type of behaviour, which inspires illegal activities on the part of racist and xenophobic groups, including the use of computer systems. The expression of such ideas is an insult to all who were victims of the Holocaust as well as to their families. It is also an affront to human dignity.

Article 6 of the Protocol thus deals with this problem. It establishes clearly the principle that facts the historical truth of which has been legally established may not be denied, grossly minimized, approved or justified in order to support detestable theories and ideas.

I should also like to recall here that the European Court of Human Rights, in its ruling in the case of *Lehideux and Isorni* of 23 September 1998, clearly indicated that the denial or revision of “clearly established historical facts — such as the Holocaust — [...] would, by

virtue of Article 17, not enjoy the protection of Article 10” of the European Court of Human Rights.

The pedagogical approach

Let us recall a recommendation of Primo Levi: *“The type of hatred felt by the Nazis [...] is foreign to mankind. It is a poisonous fruit stemming from the baneful fascist brood but at the same time outside and beyond fascism itself. We cannot understand it; however, we can and must understand where it came from [...]. Though it may be impossible to understand, we must know about it...”*.

The pedagogical or educational approach consists in the establishment of websites whose purpose is not to “reply” to or to engage in polemics with the racists, xenophobes and deniers, but to provide information for a public anxious to know and understand. Thus, in a number of countries we find a rather timid blossoming of sites created by students, teachers, private parties and associations, mostly in the form of documentary files or yearbooks of sites devoted to these topics.

This is an important type of work and all of us — States, non-governmental organizations and international institutions — have a collective duty to support it.

I should also like to mention the important role of the Council of Europe’s European Commission against Racism and Intolerance (ECRI) which has prepared a recommendation of its own for the fight against the spread of racist, xenophobic and anti-Semitic material on the Internet.

The ECRI stresses in particular the importance of making children aware of these questions.

The Council of Europe likewise adopted, in 2001, a recommendation on the self-regulation of cyber content and organized in Warsaw, last March, a pan-European forum on illegal and harmful cyber contents.

Conclusions

There is no miraculous solution we can hope for if we wish to fight effectively against racism and xenophobia on the Internet. The Internet must remain an extraordinary opportunity for everyone and must not become a paradise for criminals. The rule of law, pluralist democracy and human rights, the values on which the Council of Europe is founded, must not be abused on the Internet.

For this purpose, international and inter-institutional co-operation is indispensable. We have drawn up in the Council of Europe the only treaty in the world aimed at combating racism and xenophobia on the Internet, and I hope that this meeting will provide the occasion for a large number of States to adhere to that Protocol. Let me recall that it is a treaty open to both European and non-European States. Furthermore, this meeting could also provide an opportunity for launching parallel initiatives of an educational nature, with the purpose of devising codes of good conduct on the Internet. I can assure you straight away that the Council of Europe will support such initiatives, and we remain ready to work with the OSCE

and our member States in this area. Complementarity is our strength, whereas a waste of energy plays into the hands of criminals.

Ladies and Gentlemen, we must not stop here. The challenges remain with us and we must act, keeping pace with the development of information technology. Today, racist websites are not limiting themselves to developing, selling and distributing racist propaganda but are also specifying what should be the potential targets of terrorist acts, and telling people how to commit a terrorist attack, where and how to find explosives and weapons, and so on. This link between racist and terrorist websites is a growing concern, in particular for the law enforcement authorities, and it is a phenomenon which we must oppose as quickly as possible. I take this opportunity to invite all of you to attend our "*Side Event*" which will be devoted to this question. We plan to hold this Side Event today at 2 p.m. in these same premises.

Only if it respects the values of the rule of law, pluralistic democracy and the rights of man will globalization, particularly in the realm of technology, become fully legitimate and gain full acceptance by all peoples. The extraordinary potential of the Internet cannot be developed unless due account is taken of these principles.

Thank you for your attention.