



Third Study Commission
Criminal law and procedure

Meeting in Recife, 17-21 September 2000

Final Report

INTERNATIONAL CRIMINAL LAW

The subject for this year was "International Criminal Law". Some members of the Study Commission noted that this term should exclusively be understood as limited to offences against international institutions; for example offences of fraud within the European Union for which the new machinery proposed by the *Corpus Juris* might deal. It is obvious that this specialized form of criminality does not fall within our terms of reference.

Written reports were submitted by Argentina, Austria, Belgium, Bolivia, Canada, Cyprus, Denmark, England & Wales, Germany, Greece, Ireland, Italy, Japan, Liechtenstein, Lithuania, Luxembourg, The Netherlands, Portugal, ROC Taiwan, Romania, Spain, Sweden and Switzerland.

Delegates from the following countries attended and contributed to our discussions: Argentina, Belgium, Brazil, Canada, Denmark, England & Wales, Germany, Greece, Iceland, Ireland, Israel, Italy, Ivory Coast, Liechtenstein, Luxembourg, Mali, Morocco, The Netherlands, Norway, Romania, Slovenia, Slovakia, Sweden, Switzerland, ROC Taiwan, Togo, Uruguay and the USA.

Our first question was: "What forms of International Criminal Law are there in your system?" Participants emphasized that international agreements which are ratified by governments are incorporated into individual criminal systems in different ways. The point was made, however, that this incorporation is not always complete and it is sometimes the case that governments or legislators limit the power of their own judiciary by not fully implementing the international agreement, thus preventing the judiciary from its complete application. A first requirement would be for each country to put its own house in order by making full use of existing powers. As almost all our criminal systems recognize under domestic law most of the so-called international criminality, that is to say serious cross-border crime, which includes trafficking in drugs and human beings, and other forms of organized crime, an additional criminal court on the super-national level does not seem necessary or relevant. It is far more important to improve the ways and means of international co-operation to arrive at speedier and more effective results in the combating of international crime. Examples of international co-operation are to be found in the 1999 Protocol of Mutual Legal Assistance in Criminal Matters of MERCOSUR between Brazil, Uruguay, Paraguay and Argentina and the European Convention on Mutual Assistance in Criminal Matters signed in May 2000. Some countries in Europe and in South America have recently instituted a "national" section of the judiciary with a form of vertical structure, not only to co-ordinate the prosecution of major criminality within the borders of their country but more importantly to strive for more effective co-operation at the international level. In Europe, these entities belong to the judicial branch of the Public Prosecution; in South America, judges are directly included. Because of the importance of the judicial aspect of international co-operation (as opposed to the simple exchange of intelligence between enforcement agencies), the Study Commission thinks that to guarantee effective criminal justice, such collaboration should include all members of the judiciary in both its vertical and its horizontal structure.

A general tendency is growing to apply the rule "prosecute or extradite". There are, however, a number of formal and even political obstacles to the general application of this principle. Participants therefore unanimously expressed the wish that proceedings for extradition and "denonciation" should be radically simplified within the context of the bi-lateral and multi-lateral agreements and international

treaties which exist today, so as to achieve a speedier, more efficient and fairer justice for all concerned, including the accused.

The second question was: "Which aspects of criminal law should have a supra or international dimension?" After a lively discussion, participants came to the conclusion that there was no real reason to give a particular international dimension to crimes that are already punishable as breaches of existing domestic criminal law. As for war crimes and crimes against humanity, international tribunals already exist. It was suggested that one further aspect of criminality might be included; that is to say when within the same country one government is replaced by another and the new government seeks to punish crimes committed by its predecessor. It was also suggested that an international tribunal might be empowered to tackle the new and rapidly developing forms of high-technology criminality at least until national systems have developed adequate and effective domestic remedies. The majority, however, would prefer that international collaboration between the different countries should provide the necessary solution to this problem.

Our third question was: "Should international criminal legislation be exercised by supra or international courts?" Following the decision of the Study Commission on question 2, the answer we give, subject to what we have already said, is "No". We finally express a hope that the day will come when mutual confidence between countries of the world will remove all the technicalities which presently impede international co-operation in criminal matters.

Topic of next year:

Confronting high-tech criminality. What means do our systems provide? How can we achieve better collaboration between different countries? (*aut dedere aut judicare*)

Recife, 20th September 2000