



Third Study Commission
Criminal law and procedure

Meeting in Madrid, 23 - 27 September 2001

Conclusions

CONFRONTING HI-TECH CRIMINALITY

The theme of the Third Study Commission's work was high-tech criminality. What means do our systems provide? And how can we achieve better collaboration between different countries so as to bring such crime to trial?

Written reports were submitted by 23 countries, namely Austria, Argentina, Belgium, Bolivia, Canada, Denmark, England and Wales, France, Germany, Iceland, Ireland, Israel, Japan, Liechtenstein, Lithuania, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland and Taiwan.

Delegates from 33 countries attended our meetings and contributed to an lively discussion. The countries represented were Argentina, Belgium, Bolivia, Brazil, Canada, Cameroon, Croatia, Denmark, England and Wales, Finland, France, Germany, Greece, Iceland, Ireland, Israel, Ivory Coast, Liechtenstein, Lithuania, Mali, Morocco, Moldavia, Poland, Portugal, Senegal, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, Togo, and Tunisia.

Beginning in France in the 1970's, most of the countries represented have enacted legislation to combat computer crime. Most of this legislation dates from the 1990's with the most recent being that coming into force in Mali a few days ago, in September 2001. The purpose of this legislation is twofold. Firstly, it aims to combat the commission by computer technology of national and international crime. Secondly, it aims to safeguard the integrity of data stored in computer systems. It is clear that such aims cannot be achieved without proper and effective rules within each country's criminal jurisdiction.

Some countries have enacted new legislation; others have widened the ambit of existing laws so as to permit, for example, the search and seizure of computer records. Such procedures must always be subject to judicial control to afford appropriate protection of the right of privacy and the legitimate commercial confidentiality of business records.

There is a need for increased international co-operation. Work is in hand to reach such agreements. The Council of Europe has approved a final draft convention on Cyber-crime. There are other initiatives including discussions between those countries of South America who are members of MERCOSUR, between the G8 group of countries, and between the United States and Canada.

To be able to respond adequately to the challenge of this new form of criminality, most countries agree that there should be special training for police officers, prosecutors and judges. This need is especially important in those countries where the necessary expertise may still be lacking. Members recognized the risk that, without such expertise, safe-havens for computer crime could spring-up and attempts to stem this growth could be impeded.

Several suggestions were made for possible international solutions. A proposal for a new international tribunal for such cases was rejected almost unanimously. Another suggestion was that difficult questions between countries, for example over extradition, might be referred to the United Nations. However, this too was rejected because it was accepted that the United Nations has no judicial power. There was much discussion of a suggestion that either the United Nations or some other agency might

help developing countries with such specialized help in this area as may be requested so as bring about an improvement in international co-operation. Whilst the Study Commission accepted that international institutions such as the United Nations may have an important world role to play in the fields of prevention, professional training and education, intervention in this area, without any judicial supervision, might bring with it some risk to the rule of law if its powers were abused.

In conclusion, all the members of the Third Study Commission re-emphasize the fundamental belief that international co-operation is essential if this sort of crime is to be properly tackled. Such collaboration demands that whilst each country should respect each other's judicial system, it should at the same time be prepared to make itself available to other countries to collaborate in accordance with national legislation or international treaty. As members of the judiciary we have a central role to play not only in our personal relations with colleagues as we do in this Commission, but also in making known these principles in our own professional world.

The subject for discussion in 2002 will be:

"A different approach to organized crime. New investigative measures; gathering of evidence; protection of individual liberties in criminal cases; the physical arrangements of the court room; together with problems related to illegal immigration and so-called new terrorism".