

Report of the Third Study Commission 2013

This year the subject of the Third Commission was Environmental pollution : is Criminal Law a good instrument?

1. Introduction

The purpose of the questionnaire distributed to member countries prior to the annual conference in Yalta, Ukraine (October 5 – October 8 2013) was to explore the extent to which member countries have implemented legislation with regard to environmental pollution and in how far such legislation – including international agreements and conventions is effective in addressing these offences.

2. Questionnaire results and discussion

2.1 The commission received 29 responses to the questionnaire: Armenia, Australia, Austria, Belgium, Brazil, Canada, Denmark, England and Wales, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Israel, Japan, Kazakhstan, Latvia, the Netherlands, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Taiwan, Ukraine and United States of America.

More than 30 from different countries participated in two Study Commissions sessions on the subject and provided valuable contributions to our discussions. Given the number of countries (over 80) that are members of the IAJ it would be interesting to explore how we could convince more countries to participate in answering at least the questionnaire. Another issue to explore would be how the work of the study commissions could be continued and form the bases of additional studies and further exchange of experiences between judges the academic world. The Central Council should take the lead in this project.

2.2 Almost all countries that participated in the questionnaire have signed international agreements and treaties. To mention a few:

- The Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (March 22, 1989)
- The HongKong International Convention for the safe and environmentally sound recycling of ships (2009);

- The UN Treaty on the Law of the Sea; (Montego Bay, November 16/1994) See f.i. articles 207 etc. on the pollution of the marine world;
- The international Convention for the prevention of Pollution from ships (1973), Marpol and its annexes;

These international conventions are considered to be good instruments for cross-border cooperation in environmental matters. This is especially important as pollution has no national boundary.

2.3 A number of countries have specialized agencies to investigate and identify violation of laws regarding the environment. All countries in addition have Police, Customs and Prosecution service to handle the cases. In some countries there is collaboration between several governmental agencies.

2.4 The deliberations during the Study Commission meetings made it clear that specialized courts or specialized judges would be more than welcome.

It was considered necessary that the judges have sufficient instruments to properly decide these legal issues. Training for judges in the specific field of environmental laws and evidence was seen as a necessity.

In environmental cases it is common, more than in other fields of law, to use experts. The use of experts can be very useful, but the judge should be able to appoint her own expert in addition to the experts provided by the parties.

The delegates discussed the problems which can arise when it comes to restitution. Almost all participating countries have rules for restitution and remediation of environmental damage; however in practice there are many complexities which make the determination of restitution difficult.

In the meetings we discussed how to find a balance between the economic interests and the pollution that can be a result of the economic activity. The exploration of the tar sands in Alberta Canada for instance makes that dilemma clear. A further point which was considered referred to the fact that the incentive to report unintentional environmental damages must be strengthened. Otherwise fear of prosecution may discourage reporting of environmental accidents.

The delegates realized that the world has to deal with some forms of legal pollution (air pollution by cars for instance) and that the solutions need all the creativity of our political leaders. There was a strong opinion that criminal prosecution should be the last resort.

2.5 During the meetings the delegates were able to come to some general recommendations regarding publication of decisions, training and specialization. These will be elaborated upon in the next meeting of the Third Study Commission at the 2014 meeting of the IAJ.

2.6 In view of the complexity of the issues at hand the Third Study Commission has decided to further evaluate the questionnaire next year and bring in new elements that could be discussed. That brings us to the topic chosen for next year questionnaire and conference.

3. Subject for 2014

Environmental Pollution: is criminal law a good instrument? A further evaluation.

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