

Report of the Third Study Commission 2014

At the last meeting of the IAJ in Yalta, Ukraine 2013, the Third Study Commission focused on the topic: Environmental pollution: is Criminal Law a good instrument?. As a result of the discussion it was considered useful – in view of the complexity of the issues at hand - to further evaluate the questionnaire and bring in new elements that could be explored at the meeting in Brazil. This year the subject of the Third Commission was Environmental pollution: is Criminal Law a good instrument? Further Evaluation.

1. Introduction

The purpose of the questionnaire distributed to member countries prior to the annual conference in Foz do Iguaçu, Brazil (November 9 – November 14, 2014) was to explore the extent to which member countries have implemented criminal legislation with regard to environmental pollution and if such laws is a good and effective instrument in addressing these offences.

2. Questionnaire results and discussion

2.1 The commission received 28 responses to the questionnaire: Australia, Austria, Belgium, Brazil, Canada, Denmark, France, Georgia, Germany, Greece, Hungary, Israel, Ireland, Japan, Kazakhstan, Mozambique, the Netherlands, Norway, Portugal, Senegal, South Africa, Spain, Sweden, Switzerland, Taiwan, Tunis, United Kingdom and United States of America.

Delegates from 24 different countries participated in two Study Commissions sessions on the subject and provided valuable contributions to our discussions.

2.2 All member countries that participated in the questionnaire have adopted measures to ensure that criminal law can be a good instrument in order to prevent, control and punish infringement in environmental pollution.

The consensus of the members was however that effective measures through civil law and administrative law should have preference. It was thought that by using these instruments private persons, enterprises, and governmental organizations would be more willing to participate actively in restoring the environment and taking measures to prevent new environmental damage.

Only when it comes to serious offences, repeated or egregious conduct is criminal law an effective instrument, see f.i. the oil spillage of the coast of France (the vessel Erika). All agreed that the possibility of criminal sanctions is necessary to promote respect and compliance with environmental laws and regulations.

2.3 As far as the agencies that are involved in investigating violations of environmental law there is the existing difference between federal states (f.i. Australia and Belgium) and states like Sweden and France. Of course there is also the existing difference between the two mainstream legal systems, common law and civil code.

Most countries have a great variety of programs and legislation aimed at prevention and seeking viable alternatives to penal sanctions.

In discussion different options available to have specialized judges dealing with environmental issues, the difference in the above mentioned legal systems became clear. The use of experts – brought forward by the parties or on initiative of the court – is generally accepted and is often necessary due to the complexity of the technical issues.

Some feel that specialized courts were needed and appropriate, especially where there are many cases. The U.S.A has a specialized court dealing with import/export issues including contraband, the US Court of International Trade. However most thought that there were not yet enough cases to justify a specialized court. All felt the need for resources and better advice/opinion on technical matters that come up in environmental cases. The ability of the court to appoint its own experts or to have staff experts was very beneficial. Netherlands, for example, has staff experts to provide advice to its courts on scientific matters.

2.4 There was a consensus that the conventions play an important role in saving the environment, in other words to save the planet. Most important in this sense is the *Convention of International Trade in Endangered Species of Wild Fauna and Flora* (CITES and its annexes). In addition to that, the European Union has a great number of directives to enforce the protection of the environment.

2.5 The responses to the questionnaire reflected almost universally that it is of the upmost importance to find a balance between the economic interests and environmental harms that can be a result of an economic activity.

The members joined Canada in the opinion that while economic growth is considered to be extremely important it should not come at a detrimental cost to the environment.

However, the question arises how far it falls within the scope of the role of the Judiciary in the country. Several countries believe that the balance between economic growth and environmental protection is within the competence of the legislative and executive branches of the government rather than the judiciary.

The delegation from Ireland came with the idea that the most likely form of effective international legal framework for dealing with environmental issues would be some form of international organization like the World Trade Organization.

All the members present at the meeting, in the end, fully accepted the adagium: “In dubio pro natura” as presented at the International Conference on Environmental International Law.

3. Presidency

The presidency of the Study Commission has changed this year. The president of the Study Commission, Frans Bauduin, as well as all three vice presidents, Mårit Bergendahl, Virginie Duval and Charles Simpson finished their second term. Within the commission elections were held in accordance with the regulations of the IAJ. The result is the following:

Charles Simpson, United States of America	President
Dieter Freiburghaus, Switzerland	Vice President
Lene Sigvardt, Denmark	Vice President

4. Working methods and subject for 2015

4.1 The members decided that in the future the working method of the 3rd Study Commission will be changed, based on the results of the past years as follows:

- The topic of the conference will be discussed during two years. In the second year the chosen topic will be further evaluated based on the results of the discussions at the assembly in the first year.
- The questionnaire to be sent out to the members will be limited in length. In general it will consist of five or six questions which in general terms outline the topic.
- The presidency of the commission will compile a synopsis of the answers sent in before the deadline. Based on this synopsis the presidency will draft statements on the subject. The synopsis and the statements will be sent to the member associations in advance of the upcoming conference.
- At the meetings these will be discussed and finalized in a report.

4.2 Next Year: There is growing evidence that sport is congested by match fixing and illegal betting. These illegal activities jeopardize the integrity of competitions, damage the social, educational and culture values reflected by sports, and threaten the economic role of sports.

The topic for next year questionnaire and conference is: Sports corruption and gambling

The Third Study Commission will formulate a limited number of questions on this subject for the 2015 questionnaire in order to further evaluate the topics in 2016.

Foz du Iguassu, Brazil, November 2014

Frans G Bauduin, President

Märit Bergendahl, vice president

Virginie Duval, vice president

Charles Simpson, vice president