

REPORT OF THE SECOND STUDY COMMISSION

TO CENTRAL COUNCIL

53rd ANNUAL MEETING OF THE IAJ

DAKAR, SENEGAL

November 10, 2010

The topic for discussion in the Second Study Commission this year was the following: Civil Issues Regarding the Protection of Privacy (with Particular Emphasis on Such Matters as Affected by the Internet). There were 26 responses to the questionnaire that was circulated to member associations. A summary of the responses was prepared, and was adopted by the Study Commission; it will be filed with the Secretariat together with this report.

The Protection of Privacy issue generated a lively and robust discussion amongst the member representatives who attended the meetings yesterday and on Monday. The general thrust of those discussions is reflected in the Summary Report that will be filed. We highlight the following observations, however:

- 1) In terms of the laws applicable to protection of privacy in the various legal systems, the Study Commission noted that all countries recognize the right to privacy in one way or another. Many countries reported that the right to privacy is entrenched in their country's constitution. In the other countries, the right to privacy has been recognized through legislation and/or through developing jurisprudence. The right manifests itself through civil code provisions, privacy legislation, claims at common law, and, in some countries, through adherence to international conventions.
- 2) The Study Commission also noted that, with the increasing use of computer technology and the omnipresent reality of the Internet, most countries have sought to address problems of data processing by detailed legislation – in particular by seeking to give the subject of the data collected rights to access to data concerning him or her, and seeking to prevent the misuse of such

data, for example by governments or private sector enterprises engaging in e-commerce.

- 3) The responses, and our discussion, reflected that, in parallel with the development of protection of privacy, some countries have enacted specific legislation giving rights to the citizen to obtain access to information held by public authorities. Commission delegates welcomed the developments in that field.
- 4) The question of the sharing of personal data held by one government agency with another government agency was held to be an important issue. It is addressed in varying ways by most countries through legislation. The Commission members noted that there appears to be a move to relax restrictions on sharing, both nationally and internationally for – among other things – tax purposes or terrorist related activities. The Study Commission believes that continued vigilance with respect to such developments is appropriate and important.
- 5) Finally, we observe that the vigorous debate about privacy that moved around our table reflected not only the interest of the participants in the topic itself, but also an interest in the way in which the various countries are attempting to grapple with the ever-mushrooming problems inherent in the rise of the Internet and its generally uncontrollable nature.

The topic for discussion next year is “Cross-border issues in the face of increasing globalization – as reflected in a series of individual fact scenarios.

I would like to thank the Study Commission vice-chairs – Carole Besch of Luxembourg, and Zila Zfat of Israel – for their always helpful and wise contributions to the work of the Commission over the past two years.

The new officers of the Second Study Commission are:

President – Zila Zfat (Israel)

Vice-Presidents -- Reiner von Sutphen (Holland)

Jennifers Davies (Australia)

Thank you.