



Third Study Commission
Criminal law and procedure

Meeting in Dublin (Ireland), 12-16 July 1987

Conclusions

ORGANIZED CRIMES BEING INTERNATIONAL IN CHARACTER:
PROBLEMS OF EVIDENCE

Written reports on the theme of this year: Internationally organized crime, problems of proof were delivered by the delegations of : Austria, Belgium, Brazil, Denmark, England, the Federal Republic of Germany, Finland, France, Ireland, Japan, Liechtenstein, Luxembourg, Morocco, the Netherlands, Norway, Portugal, Scotland, Sweden, Switzerland and Tunisia.

The theme was discussed with the two vice-presidents Roelof Manschot and Karl Muller acting as co-presidents by delegates of 23 countries (the countries mentioned here above including Israel, Italy and Senegal).

The Commission adopted in general the suggestions made in the general report by the president of the Commission Raymond Screvens and reached the following recommendations and conclusions: organized crime is understood to be each offence committed by a group or association of a grave character, while the offence is not restricted to the territory of one single country in relation to who the offenders are, where it has been committed, or in relation to its effects or consequences (for instance: international terrorism, international drug trafficking or offences in the field of financial crime).

As far as the inadmissibility of evidence is concerned the principles of the presumption of innocence and of *in dubio pro reo* were unanimously accepted. For this reason the reversal of the burden of proof is rejected in most countries and, even when this possibility is admitted in a legal system, it gives rise to intense discussions in the countries concerned. The majority of the delegates considered that, in order to adopt the existing means of proof and methods of investigation to this new kind of crime within a strict system of boundaries set by national legislations and in respect of the Human Rights there should be powers available to enable

- the use of under-cover agents, not being agents provocateurs;
- the admission of evidence given by anonymous witnesses;
- the complete body search
- the interception of telephone conversations

At the same time the development of the application of technical methods of obtaining evidence which might be more in line with the physical and moral protection of persons was favored.

These new means of obtaining evidence should be submitted to the consent of an independent authority, very often a judicial authority, in order to guarantee the legality of the means and to prevent misuse.

A certain harmonization of the national legislations in this field as well as in the fields of extradition and legal aid and the improvement of international co-operation on the police level are necessary, to ensure a better protection of society against internationally organized crime.

The Commission expressed its concern about the grave impact on their societies caused by internationally organized crime. They observed that, in view of the aforementioned differences in the various national legal systems, it might become necessary, in order to continue the fight against this type of crime in a more efficient and successful way, to create an international judicial authority to handle crime of this kind.