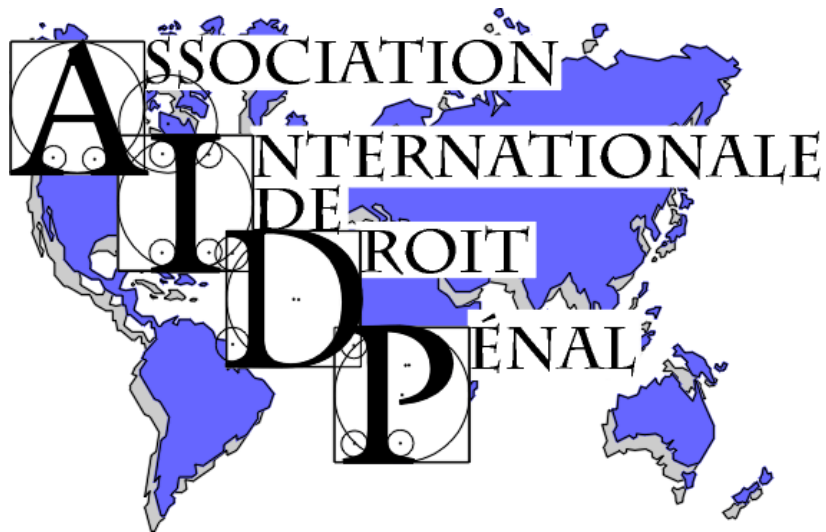


ASSOCIATION INTERNATIONALE DE DROIT PENAL
INTERNATIONAL ASSOCIATION OF PENAL LAW
ASOCIACIÓN INTERNACIONAL DE DERECHO PENAL



Lettre d'information

Newsletter

Carta informativa

2017

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MESSAGE DU PRÉSIDENT

John Vervaele
Président

Chers collègues et amis, membres de l'Association internationale de droit pénal (AIDP-IAPL) et chers représentants des groupes nationaux de l'AIDP,

Dans cette Newsletter, préparée avec soin par notre Secrétaire Général, Carlos Japiassú, vous trouverez les dernières informations sur les activités de l'Association. Depuis le succès du XIXe Congrès International à Rio de Janeiro, du 31 au 6 septembre 2014, année du 90e anniversaire de l'AIDP-IAPL, le Conseil de Direction a adopté en juin 2015 les Considérations Stratégiques de l'AIDP-IAPL pour les années 2015-2019. Comme nous sommes à mi-chemin de la période, c'est un bon moment pour faire l'inventaire et pour voir ce que nous avons réalisé et où nous devons investir mieux et améliorer. Je ne veux pas me concentrer sur tous les points, mais zoomer sur 3 d'entre eux.

Promotion des activités scientifiques et de la collaboration scientifique

La promotion des activités scientifiques et de la coopération scientifique est l'objectif vital et la raison d'être de l'Association. Grâce à la coopération de COEX-CODIR-COSC et des groupes nationaux, nous avons réussi à exécuter le nouveau design de nos colloques internationaux qui préparent le Congrès en 2019. Du 23 au 25 septembre 2016, le Colloque international pour la Section II, «La réglementation alimentaire et la justice pénale» a été organisé en Chine, à Beijing. Grâce aux investissements importants du groupe national chinois, le vice-président Katalin Ligeti et le rapporteur général Adan Nieto, nous avons réussi à combiner des discussions approfondies sur le rapport général et projet de résolutions avec un colloque substantiel sur le sujet en Chine. La planification est que les résultats seront publiés dans le RIDP et dans une contribution chinoise à l'AIDP Libri-série.

Le premier colloque international sur l'agenda pour 2017 est organisé par le groupe national argentin à Buenos Aires du 20 au 23 mars 2017. Le sujet (Section I) est «Responsabilité individuelle pour la participation des entreprises aux crimes internationaux». Aussi, le président du groupe national argentin, Javier de Luca, et le rapporteur général Stefano Manacorda travaillent très fort pour que le nouveau format soit mis en place. Ils envisagent également une publication double, tant dans le RIDP que dans la série AIDP Libri.

Le colloque international pour la Section IV, initialement prévu aux États-Unis, a été déplacé à une autre date et lieu et aura lieu à Bâle, en Suisse, du 2 au 4 juin 2017, juste avant nos réunions annuelles à Paris. Je tiens à remercier tout particulièrement Sabine Gless pour son engagement. Elle assume non seulement le rôle de rapporteur général, mais aussi ce d'organiser le colloque international.

Enfin, le colloque international pour la Section III aura lieu en 2018 à Freiburg à l'Institut Max Planck, du 18 au 22 Juin 2018.

Le travail scientifique de l'AIDP ne se limite pas à son Congrès et Colloques Internationaux. Nous sommes fiers de pouvoir organiser en mai 2016, en coopération avec l'Association Roumaine des Sciences Pénales / Groupe National Roumain de l'AIDP, l'Institut de Recherche Juridique de l'Académie Roumaine des Sciences et l' Université Ecologique de Bucarest, la Deuxième Conférence Mondiale de l'AIDP sur la protection de l'environnement par le droit pénal. La protection de l'environnement par le droit pénal figure dans le programme d' AIDP depuis les années 1970 et l'importance scientifique et sociétale du sujet a également augmenté. Grâce à tous ceux qui ont participé à cette entreprise, il a été possible de discuter des défis actuels de la protection de l'environnement et du rôle que le droit pénal pourrait et devrait jouer pour protéger les biens communs des générations futures. La procédure de publication est en cours pour le premier volume du Journal RIDP renouvelé de l'AIDP.

D'autre part, l'Association devrait poursuivre l'opérationnalisation de son réseau institutionnel scientifique (le Réseau AIDP de Justice Pénale). Maintenant que l'AIDP a conclu des accords de partenariat à l'échelle mondiale, cette plate-forme doit non seulement être utilisée pour échanger des idées, mais aussi pour agir de manière opérationnelle lorsqu'il s'agit d'appels d'offres ou d'activités représentatives dans les forums internationaux. Une deuxième réunion du Réseau AIDP de Justice Pénale a eu lieu en marge de la Conférence mondiale de l'AIDP sur la protection de l'environnement par le droit pénal à Bucarest. Lors des réunions de Paris en 2017, nous devons faire des décisions sur la partie opérationnelle du Réseau.

Amélioration de la stratégie de publication et de communication de l'Association

Le vice-président exécutif Jean-François Thony a consacré beaucoup de temps à renouveler le site Web de l'AIDP et à en faire un outil attrayant et interactif. Nous transformons également le site Web dans un outil de portée mondiale, en ajoutant les langues de l'ONU.

Sous la direction du Directeur Général des Publications, Gert Vermeulen, assisté de la rédactrice Ligeia Quackelbeen, nous avons réussi à interconnecter beaucoup mieux le programme scientifique et la stratégie de publication. Cela devrait se traduire par une amélioration de nos publications scientifiques et une plus grande visibilité de l'AIDP.

Renforcer la présence nationale et régionale de l'Association par l'intermédiaire des groupes nationaux

La performance de nos groupes nationaux est l'un des principaux piliers de l'AIDP. Heureusement, nous pouvons être fiers de groupes nationaux très actifs avec une longue expérience dans le domaine de la justice pénale et la participation de prestigieux experts nationaux.

Néanmoins, il y a place à amélioration à ce niveau. Historiquement, nous ne sommes pas forts dans toutes les régions du monde et / ou dans toutes les traditions juridiques du monde. Nous avons tenté de renforcer notre présence en Afrique et en Asie et nous espérons qu'il en résultera de nouveaux groupes nationaux. Nous avons également des pays dans lesquels les groupes nationaux sont devenus inactifs. Il s'agit d'un processus naturel, également lié à des changements de génération. Aussi, nous essayons de donner une nouvelle vie à ces groupes nationaux, afin d'avoir une contribution accrue à l'AIDP.

La deuxième année du nouveau mandat a été très occupée, mais nous sommes confiants que nous avons donné un nouvel élan à l'AIDP pour que je puisse rénover et jouer son rôle d'organisation scientifique et professionnelle qui représente l'intérêt de la justice pénale dans un changement rapide de l'environnement sociétal. Les colloques internationaux à venir en 2017 et les conférences régionales, etc. offrent d'excellentes opportunités pour nous tous.

J'espère que vous apprécierez la lecture de la newsletter et je suis impatient de vous rencontrer bientôt.

LA VIE DE L'ASSOCIATION

Carlos Eduardo A. Japiassú
Secrétaire Général

La vie de l'Association a été très active, avec une nouvelle conception de ses activités scientifiques et une nouvelle stratégie de publications, qui a été présentée par la vice-présidente Katalin Ligeti et directeur général des publications Gert Vermeulen.

L'activité scientifique principale du terme 2014-2019 sera le XXe Congrès International de Droit Pénal, qui aura lieu en 2019, le 120e anniversaire de l'Union Internationale de Droit Pénal. Le site du Congrès est encore à déterminer et il sera décidé lors de la prochaine réunion du Conseil de Direction avec les représentants des groupes nationaux, à Paris, les 9-10 juin 2017.

Les groupes nationaux qui souhaitent accueillir le Congrès peuvent présenter leurs candidatures au Comité Exécutif pendant ce semestre.

En outre, certains changements dans la politique de publication de l'AIDP nous ont conduit à réviser le montant des frais d'abonnement, les frais normaux avec une copie papier de la Revue Internationale de Droit pénal portant de 65 € à 85 €, et les frais pour des étudiants, des retraités ou sans une copie papier de la Revue de 40 à 45 €. Il faut noter que l'abonnement de base de 45 € permet d'accéder à toutes les versions électroniques des publications de l'AIDP, y compris les volumes historiques de la Revue internationale pénal, actuellement en cours de numérisation et de numérisation.

Il est juste de dire que les cotisations à l'AIDP n'ont pas été augmentées depuis 1995 et il est donc compréhensible qu'elles soient ajustées pour permettre à l'Association de mieux rendre les services que ses membres attendent.

Enfin, l' IAPL / AIDP s'efforce de renforcer la coopération avec son Réseau de Justice Pénale, en particulier avec l'Institut international Siracusa de justice pénale et droits de l'homme, avec une offre plus large d'activités et de cours qui peut être trouvé sur nos sites Web (www.penal.org and www.siracusainstitute.org). Le travail en collaboration avec des partenaires, tels que d'autres associations et instituts, fait partie de l'objectif d'établir une coopération fructueuse dans le monde entier.

LES ACTIVITES SCIENTIFIQUES DE L'ASSOCIATION

Katalin Ligeti

Vice-présidente chargée de la Coordination Scientifique

Du 23 au 25 septembre 2016, le Colloque International sur la «Réglementation alimentaire et justice pénale» a été organisé en Chine, à Beijing. De nombreux experts ont participé au colloque sur ce sujet très pertinent et les discussions ont résulté en un ensemble de résolutions qui seront publiées avec le rapport général bientôt.

Du 23 au 26 août 2016, la Conférence Mondiale de l'IBCCRIM a eu lieu à São Paulo (Brésil). Au cours de cette conférence, les représentants de l'AIDP ont eu une réunion avec les associations sœurs, dont IBCCRIM, la Société Internationale de Défense Sociale et la Société Internationale de Criminologie.

Les dates et les lieux des colloques internationaux à venir se trouvent sur notre site Web. Veuillez noter que le Colloque International pour la Section IV a été déplacé à une autre date et lieu et aura lieu à Bâle, en Suisse, du 2 au 4 juin 2017, juste avant nos réunions annuelles à Paris.

Le premier Colloque International à l'ordre du jour de 2017 est organisé par le groupe national argentin à Buenos Aires du 20 au 23 mars 2017. Le sujet (Section I) est «Responsabilité individuelle pour la participation des entreprises aux crimes internationaux».

Les récents développements dans l'UE suscitent un intérêt croissant d'autres parties du monde. Nous accueillons donc l'organisation d'un Congrès sur la Justice Pénale Comparative due 23 au 30 juillet 2018 par l'AIDC (Académie Internationale de Droit Comparé) à Fukuoka au Japon et la préparation de la Conférence des Nations Unies sur la Prévention du Crime et la Justice au Japon en 2020.

LES PUBLICATIONS DE L'ASSOCIATION

Gert Vermeulen
Directeur Général des Publications

En 2016, la nouvelle stratégie de publication de l'AIDP, approuvée par le Conseil de Directeurs en 2015, a été mise en œuvre.

Le directeur général des publications, le secrétaire de la rédaction et le comité exécutif du comité de rédaction ont établi des directives éditoriales pour les éditeurs et les auteurs, des directions de style, un guide de référencement et une note de processus de peer review pour les différents véhicules de publication de l'AIDP, i.e. la RIDP, le RIDP Libri série et la e-RIDP. Tout cela a été approuvé par le Conseil de Directeurs de 2016.

Le Conseil a aussi accueilli la conclusion d'un nouveau contrat de publication pour la RIDP avec Maklu Publishers (Anvers, Apeldoorn, Portland), offrant un nouveau "look and feel" pour les trois canaux de publication et prévoyant la création par l'éditeur d'un archive pour le RIDP (comprenant toutes les publications depuis 1914, impliquant une énorme opération d'indexation et de scanning) et le RIDP Libri. Tous les abonnés au RIDP bénéficieront d'un accès automatisé aux archives électroniques via le site Web de l'AIDP (à l'aide de leurs lettres de créance AIDP) en plus de leur droit à la version papier du RIDP, permettant recherches d'auteur, de publication et de titre ainsi qu'une recherche de texte intégral dans les archives globales. Les archives électroniques entièrement opérationnelles devraient être opérationnelles avant le printemps 2017.

Afin d'assurer la santé financière de la politique de publication et du fonctionnement de l'Association, le Conseil de Directeurs en 2016 a approuvé une augmentation modérée des prix pour l'adhésion au AIDP et la souscription au RIDP prenant effet à compter de 2017.

En vue de la décision de lier la publication des publications du RIDP aux activités scientifiques fondamentales de l'Association (c'est-à-dire les conférences mondiales, les conférences liées à la section et le congrès) et d'élever les normes scientifiques et linguistiques du RIDP (conduisant à plus de travail pour les éditeurs scientifiques chargée d'une publication), le travail sur le manuscrit de l'édition 2016/1 du RIDP lié à la Conférence mondiale de Bucarest de mai 2016 sur la protection de l'environnement par le droit pénal, s'est terminé avec succès en décembre 2016. L'édition a été publiée pendant ce temps et sera suivie d'une publication au printemps 2017 du numéro 2016/2, relative à la Conférence de Beijing de septembre 2016 pour la Section II sur la réglementation des aliments et la justice pénale. Les éditions de RIDP de 2017 porteront respectivement sur la Conférence de Buenos Aires de mars 2017 pour la Section I sur la responsabilité individuelle en matière de participation des entreprises aux crimes internationaux (numéro 2017/1) et la Conférence de Bâle de juin 2017 pour la Section IV sur les questions juridictionnelles relatives aux poursuites du droit international (numéro 2017/2).

En ce qui concerne la série *libri* du RIDP, des travaux préparatoires sur deux questions a déjà été lancée. En outre, l'Association a communiqué avec tous les groupes nationaux en les invitant à saisir l'occasion de publier des articles en la série, qui a notamment été créée pour permettre à l'Association, conformément à son plan d'action, de renforcer ses relations avec les groupes régionaux. La série permet la publication de livres sous le drapeau de l'Association. Les groupes nationaux ou les membres (y compris les Jeunes Pénalistes ou leur Comité) souhaitant publier dans la série libri du RIDP se verront proposer des modèles et des feuilles de style open-source garantissant leur conformité avec la publication de l'AIDP. Les contrats de publication peuvent être négociés directement par des auteurs ou des éditeurs de partout dans le monde avec leur éditeur (local) de choix, qui a droit à l'utilisation du modèle de couverture nouvellement conçu sans frais. Les entrées dans la bibliothèque du RIDP sont possibles pour les livres monolingues soit dans l'une des six langues des Nations Unies (Arabe, Chinois, Anglais, Français, Russe ou Espagnol), soit en allemand, italien ou portugais à condition qu'un résumé anglais limité soit inclus. La publication dans la série permettra d'accroître la visibilité mondiale des activités

scientifiques des groupes nationaux ou régionaux ou des activités des Jeunes Pénalistes puisque l'accès libre à la version électronique des livres de la série sera assuré par les archives électroniques de l'Association, accessible à tous les membres avec un abonnement à la RIDP ou la version électronique de la RIDP. L'élargissement de la portée de l'Association en étendant les langues de publication et en créant un accès libre offre une grande opportunité pour le travail scientifique à être partagé dans toute l'organisation avec des praticiens, des universitaires et des fonctionnaires dans différents pays et régions du monde.

MESSAGE OF THE PRESIDENT

John Vervaele
President

Dear colleagues and friends, members of the International Association of Penal Law (AIDP-IAPL) and dear representatives of the national groups of the AIDP,

In this Newsletter, carefully prepared by our Secretary General, Carlos Japiassú, you will find the latest information on the activities of the Association.

Since the successful XIXth International Congress in Rio de Janeiro, from the 31st to the 6th September of 2014, the year of the 90th anniversary of the AIDP- IAPL, the Board of Directors did adopt in June 2015 the Strategic Considerations of the AIDP- IAPL for the years 2015-2019. As we are in the middle of the term it is a good moment to take stock and see what we did achieve and where we still have to invest and improve. I don't want to focus on all points, but zoom in on 3 of them.

Promotion of scientific activities and scientific collaboration

Promotion of scientific activities and of scientific cooperation is the vital goal and *raison d'être* of the Association. Thanks to the cooperation of COEX-CODIR- COSC and the national groups we have been able to execute the new design of our International Colloquia that prepare for the Congress in 2019. From 23 to 25 September 2016, the International Colloquium for Section II, on "**Food Regulation and Criminal Justice**", was held in China, Beijing. Thanks to the important investment of the Chinese national group, Vice-President Katalin Ligeti and general rapporteur Adan Nieto we have been able to combine in depth discussions on the general report and draft resolutions with a substantive colloquium on the topic in China. The planning is that the results will be published in the RIDP and in a Chinese contribution to the AIDP Libri-series.

The first International Colloquium on the agenda for 2017 is organized by the Argentinian national group in Buenos Aires on 20-23 March 2017. The topic (Section I) is "Individual Liability for Business Involvement in International Crimes". Also here the president of the Argentinian national group, Javier de Luca, and general rapporteur Stefano Manacorda are working very hard to have the new format in place. They envisage also a double publication, both in the RIDP and in the AIDP Libri-series.

The International Colloquium for Section IV, originally planned in the US, was moved to another date and location and will be held in Basel, Switzerland on 2-4 June 2017, just before our annual meetings in Paris. I want to thank especially Sabine Gless for her commitment. She is not only taking on her shoulders the duty of general rapporteur, but also of organizing the International Colloquium.

Finally, the International for Section III will be held in 2018 in Freiburg at the Max Planck Institute, on 18-22 June 2018.

The scientific work of the AIDP is not limited to its Congress and International Colloquia. We are proud that we could organize in May 2016, in cooperation with the Romanian Association of Penal

Sciences/Romanian National Group of the AIDP, the Legal Research Institute of the Romanian Academy of Sciences and the Ecological University of Bucharest, the Second AIDP World Conference on The Protection of the Environment through Criminal Law. Protection of the environment through criminal law has been on the AIDP agenda since the 1970's and the scientific and societal importance of the topic has also increased. Thanks to all who have been involved in this endeavour it has been possible to discuss the actual challenges of environmental protection and the role that criminal law could and should play in order to protect the commons of the future generations. The proceedings are under publication for the first volume of the renewed RIDP Journal of the AIDP.

On the other hand, the Association should further operationalize its scientific institutional network (the AIDP Network for Criminal Justice). Now that the AIDP has worldwide partnership agreements, this platform should not only be used for exchange of ideas, but also for acting operationally when it comes to tendering or representative activities at the international fora. A second meeting of the AIDP Network for Criminal Justice was held in the margin of the AIDP World Conference on the protection of the environment through criminal law in Bucharest. In the Paris meetings in 2017 we will have to decide on the operational part of the Network.

Improvement of the Association's Publication and Communication Strategy

Executive Vice-President Jean-François Thony has invested a lot of time in renewing the AIDP website and making it an attractive and interactive tool. We are also converting the website in a global-reach tool, by adding the UN languages.

Under the lead of the General Director of Publications, Gert Vermeulen, assisted by editor Ligeia Quackelbeen, we have been able to interlink much better the scientific program and the publication strategy. This should result in an improvement of our scientific publications and greater visibility of the AIDP.

Enhancing the Association's national and regional presence through the national groups

The performance of our national groups is one of the main backbones of the AIDP. Fortunately we can be proud of very active national groups with a long past performance in the field of criminal justice and involvement of prestigious national experts.

Nevertheless, there is room for improvement at this level. Historically we are not strong in all regions of the world and/or in all legal traditions of the world. We have been attempting to strengthen our presence in Africa and in Asia and hope that it will result in new national groups. We also have countries in which national groups became inactive. This is a natural process, also linked to generation changes. Also there we are trying to bring new life to national groups, in order to have an increased contribution to the AIDP.

The second year of the new term has been very busy, but we are confident that we have given a new impetus to the AIDP, so that I can renovate and play its role as scientific and professional organisation that represents the interest of criminal justice in a fast changing societal environment. The upcoming international colloquia in 2017 and the regional conferences, etc. offer great opportunities for all of us.

I hope you enjoy the reading of the newsletter and am looking forward to meeting you soon.

THE LIFE OF THE ASSOCIATION

Carlos Eduardo A. Japiassú
Secretary General

The life of the Association has been very active, with a new design of its scientific activities and new strategy of publications, that has been presented by Vice-President Katalin Ligeti and General Director of Publications Gert Vermeulen.

The main important scientific activity of the term 2014-2019 will be the XX International Congress of Penal Law, that will occur in 2019, the 120th anniversary of the International Union Penal Law. The site of the Congress is yet to be determined and it will be decided in the next meeting of the Board of Directors together with the representatives of the National Groups, in Paris, on 9-10 June 2017.

So National Groups who wish to host the Congress can present their candidatures to the Executive Committee during this semester.

Besides, some changes in the publication policy of the AIDP led us to revise the amount of the subscription fees, the normal fees with a paper copy of the International Review of Penal Law raising from 65€ to 85€, and the fees for students, retirees or without a paper copy of the Review raising from 40 to 45€. It has to be noted that the 45€ basic subscription grants access to all the electronic versions of the AIDP publications, including the historic volumes of the International Review of Penal Law, currently being scanned and digitalized.

It is fair to say that the subscription fees to the AIDP had not been raised since 1995, and it is therefore understandable that they are adjusted to allow the Association to better render the services that its members are expecting.

Finally, IAPL/AIDP is making efforts to strengthen cooperation with its Network for Criminal Justice, specially with The Siracusa International Institute for Criminal Justice and Human Rights, with a broader offer of activities and courses, that can be found in our websites (www.penal.org and www.siracusainstitute.org). The work together with partners, such as other associations and institutes, is part of the goal of establishing a fruitful cooperation in worldwide basis.

THE SCIENTIFIC ACTIVITIES OF THE ASSOCIATION

Katalin Ligeti

Vice President in Charge of Scientific Coordination

From 23 to 25 September 2016, the International Colloquium for Section II on "**Food Regulation and Criminal Justice**" was held in China, Beijing. Many scholars attended the colloquium on this highly relevant topic and discussions led to a set of resolutions that will be published together with the general report soon.

From 23 to 26 August 2016 the World Conference of IBCCRIM was held in São Paulo, Brazil. During this conference AIDP representatives had a meeting with the sister associations including IBCCRIM, International Society of Social Defence and International Society of Criminology.

The dates and locations of the upcoming International Colloquia can be found on our website. Please note that the International Colloquium for Section IV was moved to another date and location and will be held in Basel, Switzerland on 2-4 June 2017 just before our annual meetings in Paris.

The first International Colloquium on the agenda for 2017 is organised by the Argentinian national group in Buenos Aires on 20-23 March 2017. The topic (Section I) is "Individual Liability for Business Involvement in International Crimes".

The recent developments in the EU are triggering increasing interest from other parts of the world. We therefore welcome the organisation of a Congress on Comparative Criminal Justice on 23-30 July 2018 by AIDC (International Academy of Comparative Law) in Fukuoka, Japan and the preparation of the UN Crime Prevention and Justice Conference in Japan in 2020.

THE PUBLICATIONS OF THE ASSOCIATION

Gert Vermeulen
General Director of Publications

In 2016, the new AIDP publication strategy, as endorsed by the 2015 Board of Directors in 2015, has been fully implemented.

The General Director Publications, the Editorial Secretary and the Executive Committee of the Editorial Board have established editorial guidelines for both editors and authors, formatting stylesheets, a referencing guide and a peer review process note for the various AIDP publication vehicles, i.e. the RIDP, the RIDP libri series and the e-RIDP. All of these have been endorsed by the 2016 Board of Directors.

The Board has also welcomed the conclusion of a new publication contract for the RIDP, with Maklu Publishers (Antwerp, Apeldoorn, Portland), providing a new look & feel for the three publication channels and also envisaging the establishment by the publisher of a full electronic archive for the RIDP (comprising all issues since 1914, involving a huge indexing and scanning operation) and the RIDP libri. All RIDP subscribers will (for full rate AIDP members with an RIDP subscription: in addition to their entitlement to the paper version of the RIDP) be granted automated access to the e-archives via login through the AIDP website (using their AIDP credentials), allowing both issue, author and title searches as well a full text search in the global archives. The fully functioning e-archives should be up and running before Spring 2017.

In order to secure the financial health of both the publication policy and the functioning of the Association, a moderate price raise for combined AIDP membership and RIDP subscription has been endorsed by the 2016 Board of Directors, taking effect as from 2017.

Given the decision to link publication of RIDP issues to the core scientific activities of the Association (i.e. world conferences, section-related conferences and the congress) and to raise the scientific and language standards of the RIDP (leading to more work for the scientific editor(s) in charge of a given issue), work on the manuscript of issue 2016/1 of the RIDP, linked to the May 2016 Bucharest World Conference on The Protection of the Environment through Criminal Law, has successfully concluded in December 2016. The issue has been published in the meantime and will be followed by publication in Spring 2017 of issue 2016/2, relating to the September 2016 Beijing Conference for Section II on Food Regulation and Criminal Justice. The 2017 RIDP issues will relate to respectively the March 2017 Buenos Aires Conference for Section I on Individual Liability for Business Involvement In International Crimes (issue 2017/1) and the June 2017 Basel Conference for Section IV on Jurisdictional Issues Relating to Prosecuting Corporations for Violations of International Law (issue 2017/2).

As for the RIDP *libri* series, preparatory work on two issues has already embarked. In addition, the Association has reached out to all national groups, inviting them to seize the opportunity to publish entries in the series, which *inter alia* was established to allow the Association, in line with its policy plan, to enhance its relations with national and regional groups. The series allows for books to be published under the flag of the Association. National groups or members (including Young Penalists or their Committee) wishing to publish in the RIDP *libri* series will be offered templates and open-source stylesheets guaranteeing conformity with the AIDP publication house-style. Publication

contracts may be negotiated directly by authors or editors from across the globe with their (local) publisher of choice, who is entitled use of the newly designed cover template free of cost. Entries in the RIDP *libri* are possible for mono-lingual books in either any of the six UN languages (Arab, Chinese, English, French, Russian, Spanish) or in German, Italian or Portuguese, provided that a limited English executive summary is included. Publication in the series will add to the world-wide visibility of the scientific activities of national or regional groups or Young Penalist activities, since open-access to the e-version of books in the series will be secured through the Association's e-archives, accessible for all members with a subscription to the (e-version of) the RIDP. Expanding the reach of the Association by extending the publication languages and creating open access offers great opportunity for scientific work to be shared across the organisation with practitioners, academics and civil servants in different countries and regions across the world.

MENSAJE DEL PRESIDENTE

John Vervaele
Presidente

Queridos colegas y amigos, miembros de la Asociación Internacional de Derecho Penal (AIDP-IAPL) y queridos representantes de los grupos nacionales de la AIDP,

En esta Carta informativa, cuidadosamente elaborada por nuestro Secretario General, Carlos Japiassú, encontrará las últimas informaciones sobre las actividades de la Asociación.

Tras el exitoso XIX Congreso Internacional que tuvo lugar en Rio de Janeiro del 31 al 6 de septiembre de 2014, año del 90 aniversario de la AIDP-IAPL, el Consejo de Dirección adoptó en junio de 2015 las Consideraciones Estratégicas de la AIDP-IAPL para los años 2015-2019. Como nos encontramos a mitad de dicho período es un buen momento para hacer balance y ver lo que se ha logrado y en qué aspectos todavía tenemos que seguir trabajando y mejorar. No quiero concentrarme en todos los puntos, sino centrarme en 3 de ellos.

Promoción de actividades científicas y colaboración científica

La promoción de las actividades científicas y de la cooperación científica es el objetivo vital y la razón de ser de la Asociación. Gracias a la colaboración entre el COEX-CODIR-COSC y los grupos nacionales hemos podido ejecutar el nuevo diseño de nuestros Coloquios Internacionales que sirven de preparación del Congreso de 2019. Del 23 al 25 de septiembre de 2016 se celebró en Beijing, China, el Coloquio Internacional de la Sección II sobre "Normativa alimentaria y justicia penal". Gracias a la importante inversión del grupo nacional chino, la Vicepresidenta Katalin Ligeti y el relator general Adán Nieto, pudimos combinar discusiones profundas sobre el informe general y el proyecto de resoluciones con un coloquio sustantivo sobre el tema en China. Está previsto que los resultados se publiquen en la RIDP y en una contribución china a la serie AIDP Libri.

El primer Coloquio Internacional en la agenda de 2017 será organizado por el grupo nacional argentino en Buenos Aires los días 20 y 23 de marzo de 2017. El tema (Sección I) es "Responsabilidad individual por la participación de las empresas en crímenes internacionales". También aquí el presidente del grupo nacional argentino, Javier de Luca y el relator general Stefano Manacorda están trabajando muy duro para aplicar el nuevo formato. Se prevé también una doble publicación, tanto en la RIDP como en la serie AIDP Libri.

El Coloquio Internacional de la Sección IV, originalmente planeado en los EE.UU., ha sido trasladado a otra fecha y lugar y se celebrará en Basilea, Suiza, del 2 al 4 de junio de 2017, justo antes de nuestras reuniones anuales de París. Quiero agradecer especialmente a Sabine Gless por su esfuerzo. No sólo asume la tarea de relatora general, sino también la de organizar el Coloquio Internacional.

Por último, el Coloquio Internacional de la Sección III se celebrará en 2018 en Friburgo, en el Instituto Max Planck, los días 18-22 Junio de 2018.

El trabajo científico de la AIDP no se limita solo a su Congreso y a los Coloquios Internacionales. Estamos orgullosos de haber podido organizar en mayo de 2016, en cooperación con la Asociación Rumana de Ciencias Penales / Grupo Nacional Rumano de la AIDP, el Instituto de Investigación Jurídica de la Academia de Ciencias de Rumania y la Universidad Ecológica de Bucarest, la Segunda Conferencia Mundial de la AIDP sobre la protección del medio ambiente mediante el

derecho penal. La protección del medio ambiente a través del derecho penal ha estado en el programa de la AIDP desde la década de 1970 y la importancia científica y social del tema también ha aumentado. Gracias a todos los que han participado en este esfuerzo, se han podido discutir los desafíos reales de la protección ambiental y el papel que el derecho penal podría y debería desempeñar para proteger los bienes comunes de las generaciones futuras. Los materiales están en proceso de publicación en el primer volumen de la renovada Revista RIDP de la AIDP.

Por otro lado, la Asociación debería seguir poniendo en funcionamiento su red científica institucional (Red de la AIDP para la Justicia Penal). Ahora que la AIDP tiene acuerdos de asociación a nivel mundial, esta plataforma no sólo debe utilizarse para el intercambio de ideas, sino también para actuar operativamente cuando se trata de licitaciones o actividades representativas en los foros internacionales. Paralelamente a la Conferencia Mundial de la AIDP sobre la protección del medio ambiente a través del derecho penal de Bucarest se celebró una segunda reunión de la Red de la AIDP para la Justicia Penal. En las reuniones de París de 2017 tendremos que decidir sobre la parte operativa de la Red.

Mejora de la Estrategia de Publicación y Comunicación de la Asociación

El vicepresidente ejecutivo Jean-François Thony ha invertido mucho tiempo en renovar la web de la AIDP y convertirla en una herramienta atractiva e interactiva. También estamos convirtiendo la web en una herramienta de alcance global, añadiendo los idiomas de la ONU.

Bajo la dirección del Director General de Publicaciones, Gert Vermeulen, asistido por la editora Ligeia Quackelbeen, hemos podido interconectar mucho mejor el programa científico y la estrategia de publicaciones. Esto debería suponer una mejora de nuestras publicaciones científicas y una mayor visibilidad de la AIDP.

Aumentar la presencia nacional y regional de la Asociación a través de los grupos nacionales

La actuación de nuestros grupos nacionales es uno de los principales pilares de la AIDP. Afortunadamente, podemos estar orgullosos de tener grupos nacionales muy activos con una larga tradición en el campo de la justicia penal y que cuentan con la participación de prestigiosos expertos nacionales.

Sin embargo, hay margen de mejora a este nivel. Históricamente no somos fuertes en todas las regiones del mundo ni en todas las tradiciones jurídicas del mundo. Hemos estado tratando de fortalecer nuestra presencia en África y en Asia y esperamos que ello suponga la creación de nuevos grupos nacionales. También tenemos países en los que los grupos nacionales han devenido inactivos. Este es un proceso natural, también vinculado a los cambios de generación. Asimismo, estamos tratando de dar nueva vida a los grupos nacionales, con el fin de tener una mayor contribución a la AIDP.

El segundo año del nuevo mandato ha sido muy ajetreado, pero estamos seguros de que hemos dado un nuevo impulso a la AIDP, para que pueda renovar y desempeñar su papel de organización científica y profesional que represente el interés de la justicia penal en un entorno social que cambia rápidamente. Los próximos coloquios internacionales de 2017 y las conferencias regionales, etc. ofrecen grandes oportunidades para todos nosotros.

Espero que disfrute de la lectura de la Carta informativa y espero verle pronto.

LA VIDA DE LA ASOCIACIÓN

Carlos Eduardo Adriano Japiassú
Secretario General

La vida de la Asociación ha sido muy activa, con un nuevo diseño de sus actividades científicas y una nueva estrategia de publicaciones, que han sido presentadas por la Vicepresidenta Katalin Ligeti y el Director General de Publicaciones Gert Vermeulen.

La principal actividad científica del período 2014-2019 será el XX Congreso Internacional de Derecho Penal, que tendrá lugar en 2019, el 120 aniversario de la Unión Internacional de Derecho Penal. La sede del Congreso aún está por determinar y se decidirá en la próxima reunión del Consejo de Dirección con los representantes de los Grupos Nacionales, en París, los días 9 y 10 de junio de 2017.

Por lo tanto, los Grupos Nacionales que deseen acoger el Congreso pueden presentar sus candidaturas al Comité Ejecutivo durante este semestre.

Además, algunos cambios en la política de publicaciones de la AIDP nos han llevado a revisar la cuantía de las cuotas de suscripción; la cuota normal con un volumen en papel de la Revista Internacional de Derecho Penal se incrementa de 65 € a 85 €, la de los jubilados o los miembros sin volumen en papel de la Revista se incrementa de 40 a 45 €. Cabe destacar que la suscripción básica de 45 € da acceso a todas las versiones electrónicas de las publicaciones de la AIDP, incluyendo los volúmenes históricos de la Revista Internacional de Derecho Penal, actualmente escaneados y digitalizados.

Es justo decir que las cuotas de suscripción de la AIDP no se habían aumentado desde 1995, por lo que es comprensible que se ajusten para permitir a la Asociación prestar mejor los servicios que sus miembros esperan.

Por último, la IAPL / AIDP está haciendo esfuerzos para fortalecer la cooperación con su Red de Justicia Penal, especialmente con el Instituto Internacional de Justicia Penal y Derechos Humanos de Siracusa, con una oferta más amplia de actividades y cursos que puede consultar en nuestras webs (www.penal.org y www.siracusainstitute.org). El trabajo conjunto con los socios, tales como otras asociaciones e institutos, forma parte del objetivo de establecer una fructífera cooperación a nivel mundial.

LAS ACTIVIDADES CIENTÍFICAS DE LA ASOCIACIÓN

Katalin Ligeti

Vicepresidenta encargada de la coordinación científica

Del 23 al 25 de septiembre de 2016 se celebró en Beijing, China, el Coloquio Internacional de la Sección II sobre "Normativa Alimentaria y Justicia Penal", en el que participaron muchos académicos que asistieron al coloquio sobre este importante tema y los debates dieron lugar a un conjunto de resoluciones que serán publicadas pronto conjuntamente con el informe general.

Del 23 al 26 de agosto de 2016 se celebró la Conferencia Mundial del IBCCRIM en São Paulo, Brasil. Durante esta conferencia, los representantes de la AIDP tuvieron una reunión con las asociaciones hermanas, incluido el IBCCRIM, la Sociedad Internacional de Defensa Social y la Sociedad Internacional de Criminología.

Las fechas y sedes de los próximos Coloquios Internacionales se pueden encontrar en nuestra web. Tenga en cuenta que el Coloquio Internacional de la Sección IV se trasladó a otra fecha y lugar y se celebrará en Basilea, Suiza, del 2 al 4 de junio de 2017, justo antes de nuestras reuniones anuales de París.

El primer Coloquio Internacional en la agenda para 2017 es el organizado por el grupo nacional argentino en Buenos Aires los días 20 a 23 de marzo de 2017. El tema (Sección I) es "Responsabilidad individual por la participación de las empresas en crímenes internacionales".

Los acontecimientos recientes en la UE están generando un creciente interés en otras partes del mundo. Por ello, acogemos con beneplácito la organización por la AIDC (Academia Internacional de Derecho Comparado) de un Congreso sobre Justicia Penal Comparada los días 23 a 30 de julio de 2018 en Fukuoka, Japón y la preparación de la Conferencia de la ONU sobre Prevención del Delito y Justicia Penal en Japón en 2020.

LAS PUBLICACIONES DE LA ASOCIACIÓN

Gert Vermeulen
Director General de Publicaciones

En 2016 se ha implementado completamente la nueva estrategia de publicaciones de la AIDP aprobada por el Consejo de Dirección en 2015.

El Director General de Publicaciones, la Secretaria Editorial y el Comité Ejecutivo del Consejo Editorial han establecido directrices editoriales para editores y autores, formato de hojas de estilo, una guía de referencia y una nota sobre el proceso de revisión por pares para los diversos vehículos de publicación de la AIDP, por ejemplo, la serie RIDP libri y la e-RIDP. Todos ellos fueron aprobados por el Consejo de Dirección en 2016.

El Comité también se ha felicitado por la conclusión de un nuevo contrato de publicación de la RIDP con Maklu Publishers (Amberes, Apeldoorn, Portland), que proporciona un nuevo aspecto y sensación a los tres canales de publicación y también prevé el establecimiento por parte del editor de un archivo totalmente electrónico de la RIDP (que abarca todas las ediciones desde 1914 y que ha supuesto una operación enorme de indexación y escaneo) y de la RIDP libri. Todos los suscriptores de la RIDP (para los miembros con suscripción a la RIDP, además de su derecho a la versión en papel de la RIDP) recibirán acceso automatizado a los archivos electrónicos a través de la web de la AIDP (usando sus credenciales de la AIDP), permitiendo búsquedas por tema, autor y título, así como una búsqueda de texto completo en los archivos globales. El funcionamiento completo de los archivos electrónicos debería estar en funcionamiento antes de la primavera de 2017.

Con el fin de asegurar la salud financiera tanto de la política de publicaciones como del funcionamiento de la Asociación, el Consejo de Dirección de 2016 aprobó un moderado aumento de precios de la cuota combinada de la AIDP y la suscripción a la RIDP, que entrará en vigor a partir de 2017.

Habida cuenta de la decisión de vincular la publicación de los volúmenes de la RIDP a las actividades científicas fundamentales de la Asociación (esto es, las conferencias mundiales, las conferencias relacionadas con las secciones y el congreso) y de elevar los estándares científicos y lingüísticos de la RIDP (dando lugar a más trabajo para el editor(es) científico(s) a cargo de un volumen determinado), se concluyó con éxito en diciembre de 2016 el trabajo sobre el manuscrito del volumen 2016/1 del RIDP, vinculado a la Conferencia Mundial de Bucarest de mayo de 2016 sobre protección del medio ambiente a través del derecho penal. Entre tanto se ha publicado el volumen que será seguido por la publicación en la primavera de 2017 del número 2016/2, relativo a la Conferencia de Beijing de septiembre de 2016 sobre la Sección II relativa a la normativa alimentaria y la justicia penal. Los volúmenes de la RIDP de 2017 se referirán respectivamente a la Conferencia de Buenos Aires de marzo de 2017 de la Sección I sobre responsabilidad individual por la participación de las empresas en crímenes internacionales (volumen 2017/1) y la Conferencia de Basilea de junio de 2017 de la Sección IV sobre cuestiones jurisdiccionales relativas a la persecución de las corporaciones por violaciones del derecho internacional (volumen 2017/2).

En cuanto a la serie RIDP *libri*, ya se ha iniciado el trabajo preparatorio sobre dos temas. Además, la Asociación se ha acercado a todos los grupos nacionales invitándolos a aprovechar la oportunidad de publicar en la serie, que entre otras cosas se estableció para permitir a la

Asociación, de acuerdo con su política, mejorar sus relaciones con los grupos regionales. La serie permite la publicación de libros con el logo de la Asociación. Se ofrecerán a los grupos o miembros nacionales (incluidos los jóvenes penalistas o su Comité) que deseen publicar en la serie libri de la RIDP, plantillas y hojas de estilo de código abierto que garanticen la conformidad con el estilo de publicación de la AIDP. Los contratos de publicación pueden ser negociados directamente por autores o editores de todo el mundo con su editorial (local) de elección, que tiene derecho a utilizar la plantilla de la portada recién diseñada sin costo alguno. Se admiten publicaciones en la RIDP *libri* de libros monolingües en cualquiera de las seis lenguas de las Naciones Unidas (árabe, chino, español, francés, inglés o ruso) o en alemán, italiano o portugués, siempre que se incluya un resumen en inglés. La publicación en la serie contribuirá a la visibilidad mundial de las actividades científicas de los grupos nacionales o regionales o de las actividades de los Jóvenes Penalistas, ya que el acceso abierto a la versión electrónica de los libros de la serie se garantizará a través de los archivos electrónicos de la Asociación, accesibles para todos los miembros con una suscripción a la (versión electrónica de la) RIDP. La extensión del alcance de la Asociación mediante la ampliación de los idiomas de publicación y la posibilidad de acceso abierto ofrecen una gran oportunidad para que se pueda compartir el trabajo científico en toda la organización con profesionales, académicos y funcionarios de diferentes países y regiones de todo el mundo.

ANNEXE/ANNEX/ANEXO

QUESTIONNAIRES OF THE XXTH INTERNATIONAL CONGRESS OF PENAL LAW

Topic: "Criminal Justice and Corporate Business"

1. Criminal Law. General Part.
2. Criminal Law. Special Part.
3. Criminal Procedure.
4. International Criminal Law.

Section I: Criminal Law. General Part

**XX AIDP International Congress of Penal Law
Criminal Justice and Corporate Business**

**Individual Liability for Business Involvement in International Crimes
Questionnaire for National Reports**

Stefano Manacorda

A. Defining the Scope of the Questionnaire

Section 1 of the XX AIDP International Congress of Penal Law (Preparatory Colloquium- Argentinian National Group to be held in Buenos Aires in March 2017) focuses on the current challenges criminal law encounters in determining individual liability for the most-egregious crimes committed with the involvement of economic actors.

The issue at stake is part of the general topic of "corporate complicity", which designates a multifaceted phenomenon: different types of entrepreneurs and businesses can be involved in international crimes in different ways and in different contexts. The Expert Panel of the International Commission of Jurists, for instance, in its reports on corporate complicity referred to liability in civil cases brought against companies under the US Alien Tort Statute, as well as criminal liability of individuals in the form of aiding and abetting/accomplice liability. The scientific debate has also widely highlighted the needs and obstacles of making corporations criminally liable for gross violations of human rights, both at the domestic and at the international level.

The Questionnaire focuses on the following specific topics:

- criminal acts of corporations, namely multinational corporations (both private and public);
- crimes amounting to serious violations of human rights, and in particular 'core crimes' foreseen by the Rome Statute (genocide, crimes against humanity, war crimes), and not all kinds of Treaty crimes or domestic ones;

- individual criminal liability of civilians, and in particular 'corporate officials', and not corporate liability, civil and administrative liability of individuals, individual liability of the military (which will be only indirectly dealt with, as far as their analysis is relevant for the proposed issues).

B. Historical Background and Criminological Framework

The historical background of this issue dates back to the aftermath of the Second World War when the "generals in grey suits" were called to answer before criminal courts. In the so-called Control Council Law No. 10 Trials, the Krupp, Flick, Farben and Zyklon B cases represent the first attempts to hold individuals accountable for their business activity under international criminal law. Corporate officers and owners of German firms were indicted for crimes against humanity (slave labour and torture), war crimes (slave labour and pillage), complicity in the crime of aggression and mass murder, and aiding and abetting murder, cruelties, brutalities, torture, atrocities, and other inhumane acts.

From the criminological point of view, the awareness of the involvement of economic actors into gross violations of human rights has arisen in the scientific debate in the last decade, as a consequence of both the increasing number of proceedings held before national and international courts and the growing acknowledgment of the need to protect victims and to restore justice. Specialists have identified numerous cases all over the world, in particular in connection with military dictatorships and authoritarian regimes. In the Argentinian experience, for instance, prosecutions were held against civilians for their role in the military dictatorship, including some businessmen who were charged with abductions, detention in clandestine detention centres, torture, murder and/or disappearance. The same occurred in some European countries, namely in the Netherlands for crimes committed abroad, particularly in the American region, in Africa and in Asia. The United States judges have also largely dealt with these kinds of cases, mostly from the point of view of civil law.

Scholars have identified different scenarios in which such crimes can occur. Typical forms of corporate involvement in international crimes include cooperation of businessmen with military regimes and dictatorships, as well as corporate involvement in war zones and other conflict areas. The Redflags NGO has also tried to systematize such conduct, by distinguishing several categories of corporate crimes: expelling people from their communities; forcing people to work; handling questionable assets; making illicit payments; engaging in abusive security forces; trading goods in violation of international sanctions; providing the means to kill; allowing use of company assets for abuses; and financing international crimes.

Having regard to the legal-enforcement approach, scholars distinguish three types of involvement with corporations: direct perpetrators through their employees and managers, accomplices through their assistance in the commission of international crimes by the principal perpetrators, for instance by providing logistical support and by passing on certain information. More indirect forms of involvement consist of benefiting from the commission of international crimes ('beneficial involvement') and silent approval, by continuing to do business with dictatorial regimes.

C. Assessing Individual Criminal Liability of "Corporate Officials"

In this context, criminal law faces, both at the domestic and at the international level, a high number of obstacles in assessing individual criminal liability of "corporate officials".

First, scholars highlight the difficulty in drawing the line between lawful business and corporate complicity in international crime, with reference to the so-called 'neutral actions', like the provision of goods or financial resources. In these cases, as pointed out, it is hard to distinguish between the morally condemnable behaviour of 'doing business with a bad actor' and criminally relevant contributions to another entity's international crimes.

Second, internal structure and organization within corporate actors make individual criminal liability difficult to be assessed: as corporations are generally composed of complex structures and webs of relations, those responsible for the company's involvement in a crime may be located at a great distance from the place of its actual commission, giving rise to serious difficulties in identifying and prosecuting them. The need to take into account owners, top-ranking corporate officials and other corporate officials arises, as well as the necessity to distinguish among them.

Third, international criminal courts have widely focused their efforts on military and political officials who were involved in committing crimes under international law. In contrast, the responsibility of corporations or their management for their involvement in international crimes has been at most of marginal interest in international prosecution efforts.

Finally, and as a consequence of the previous remarks, domestic norms and doctrines on perpetrators/co-perpetrators/accomplices are partially unable to deal with individuals situated so far from the commission of the offence. If it is true that corporations and businessmen, when implicated in gross human rights violations may be qualified as accomplices/participants or indirect perpetrators, many obstacles arise when trying to establish principal liability for those who participate remotely. In particular, it is difficult to prove the alleged perpetrator's or accessory's mens rea, in terms of knowledge and intent.

The Preparatory Colloquium will offer a wide comparative view of the domestic legal framework applicable to such a complex legal issue and suggest some possible changes to be taken into consideration both at the domestic and international level. The need for a balance between the effectiveness of criminal liability in relation to these egregious crimes and the protection of fundamental rights, which can be threatened by an excessive extension of punitive responses, will be constantly taken in account.

Questionnaire

National rapporteurs are asked to present their country's legal framework (norms, prominent doctrine and case-law) with regard to the individual liability for business involvement in international crimes, using the following questionnaire.

I. Foreword

1. Briefly refer to the public debate in your country, if any, on individual liability for business involvement in international crimes.
2. Briefly report the main cases of business involvement in international crimes, if any, which have been prosecuted/adjudicated before criminal courts in your country.
3. Briefly report the main cases of business involvement in international crimes, if any, which have been brought before civil courts in your country.

II. General Remarks (in a nutshell)

4. Briefly if, and in which manner, your national legal system has incorporated in domestic criminal law:
 - a. 'core crimes' as foreseen by the ICC Statute amounting to serious violations of human rights (genocide, crimes against humanity, war crimes as categories and main offences

- encompassed in them: torture, slavery, abduction, deportation, murder, forced disappearance, etc.).
- b. other offences amounting to serious violations of human rights, if any in your domestic legal order that you consider relevant for the topic.
 - c. Please specify if definitions in domestic criminal law developed certain elements of the crime in comparison to ICL.
5. Briefly summarize the position of your national legal order in relation to individual modes of responsibility, by referring both to principals and accessories.
6. In particular the following elements can be taken into account (not exhaustive and not a compulsory list):
- d. Does your domestic legal order acknowledge the principle of personal criminal liability (legal source and definition)?
 - e. Does your domestic legal order provide a unified participation system or a differentiated one?
 - f. Does your domestic legal order punish ordering, instigating, aiding and abetting, and other forms of accessory liability?
 - g. Does your domestic legal order punish moral complicity (also in the forms of approval, non-withdrawal, mere presence)?
 - h. What are the minimum requirements an accomplice contribution must fulfil (causal link or other)?
 - i. What are the subjective requirements (*mens rea*) of complicity?
 - j. How does your legal system treat the case of a contribution by a person not holding the official position in a crime requiring the perpetrator to hold such a position (*extraneus*)?
 - k. Does your legal system recognize special rules for offenses which must be committed personally, e.g., certain crimes against sexual integrity?
 - l. What is the legal framework applicable in the case of excess of the perpetrator? The commission of a crime that is not embraced by the intent of other accomplices shall be deemed to be an excess of the perpetrator.
 - m. What is the impact of different modes of participation on the sentence?

III. Corporate Complicity and Actus Reus

7. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible as perpetrators/co-perpetrators/accomplices for ordinary/routine/stereotyped acts, like supplying goods, services, logistics, information ('neutral acts'), if these acts in fact provide substantial aid for the criminal act?
8. In particular the following elements can be taken into account (not exhaustive and not a compulsory list):
- a. providing goods or material means generally used for lawful ends (e.g., vehicles, computer programs or chemicals);
 - b. providing goods or material means dangerous in nature (e.g., weapons);
 - c. supplying financial services;
 - d. providing financial means;
 - e. providing logistical support (e.g., passing on certain information);
 - f. benefiting from the commission of international crimes.

9. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible as perpetrators/co-perpetrators/accomplices for omission (omitting control)?

10. If perpetration by omission is admitted, what are the reasons for establishing an obligation to actively avert harm?

IV. Corporate Complicity and Mens Rea

11. In connection with the international crimes mentioned above (question 4), in order to hold corporate owners, top-ranking corporate officials and other corporate officials criminally responsible as perpetrators/co-perpetrators/accomplices, is a prior agreement or a common plan required?

12. In connection with the international crimes mentioned above (question 4), in order to hold corporate owners, top-ranking corporate officials and other corporate officials criminally responsible as perpetrators/co-perpetrators/accomplices, what is the required mens rea (please specify both knowledge and intent, including *dolus eventualis* and other forms) ?

13. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible as perpetrators/co-perpetrators/accomplices for negligent conduct/participation?

V. Corporate Complicity and Indirect Perpetration

14. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible under the doctrine of indirect perpetration using an organisation?

15. In particular the following elements can be taken into account (not exhaustive and not a compulsory list):

- a. Does your domestic legal order require an agreement or common plan between two or more persons?
- b. Does your domestic legal order require a coordinated essential contribution by each co-perpetrator resulting in the realisation of the objective elements of the crime?
- c. Does your domestic legal order require any individual to fulfil the subjective elements of the crime with which he/she is charged?
- d. Does your domestic legal order require the co-perpetrators to be all mutually aware of the risk that implementing their common plan may result in the realisation of the objective elements of the crime?
- e. Does your domestic legal order require that all co-perpetrators mutually accept such a result by reconciling themselves with it or consenting to it?

VI. Corporate Complicity and Collective/ Inchoate Offences

16. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible as accomplices or as members of a criminal group or for taking part in a conspiracy aimed at committing those crimes?

17. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible as a member of a Joint Criminal Enterprise (JCE) as admitted before the ICT's (ICTY and ICTR above all)?

18. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally responsible pursuant to the command responsibility doctrine, if it is applicable to civilians?

VII. Corporate Complicity and 'White Collar Crime' Doctrine

19. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be exempted from criminal liability by delegating functions to subordinates? Under which conditions is delegation admitted ?

20. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be held criminally liable for taking part in collective decisions giving rise to the offence (collegiate offences)?

21. In connection with the international crimes mentioned above (question 4), may de facto corporate owners, top-ranking corporate officials and other corporate officials be held criminally liable?

22. In connection with the international crimes described above (question 4), may individuals holding a position of control over the company but not managing it be held criminally liable? Under which conditions?

23. If criminal/administrative liability of corporations is admitted in your legal order for the crimes described above, please specify who are the individuals whose activity implicates the corporation's responsibility and under which conditions.

24. If criminal/administrative liability of corporations is admitted in your legal order for the crimes described above, please specify if individual criminal liability may be shielded or diminished where corporations themselves are held responsible.

VIII. Corporate Complicity and Defences

25. In connection with the international crimes mentioned above (question 4), may corporate owners, top-ranking corporate officials and other corporate officials be exempted from criminal liability if justifications, excuses or other grounds for excluding responsibility apply (please refer to the locus commissi of the offence and, where admissible, to the place where the corporation operates, according to your national criminal law and jurisprudence) ?

26. In particular the following elements can be taken into account (not exhaustive and not a compulsory list):

- a. Can an individual be exempted from criminal liability by claiming that the crimes of the perpetrators were undertaken pursuant to legislation applicable at the time?
- b. Can an individual be exempted from criminal liability by claiming that the crimes of the perpetrators were ordered by competent authorities (due obedience)?

- c. Can an individual be exempted from criminal liability by generally claiming to fear if he/she did not collaborate?
- d. Can an individual be exempted from criminal liability or his liability mitigated claiming coercion, state of necessity or duress?
- e. Can an individual making substantial contribution to the criminal activity of the perpetrators be exempted from criminal liability if he/she manages to prove that he lacked command authority or any kind of influence over the perpetrators thereof ?

IX. Suggestions and Conclusion

27. Do not hesitate to mention any relevant point you think the Questionnaire has missed and give suggestions where applicable.

28. Summarize, where applicable, legal reforms that have been proposed or you would recommend in your domestic legal order.

29. Please state briefly the main conclusion of your National Report.

Section II: Criminal Law. Special Part

**XXth AIDP-IAPL International Congress of Penal Law
Criminal Justice and Corporate Business**

**Food Regulation and Criminal Justice
The Right to Food Fit for Human Consumption:
Harmful Foods and Food Fraud**

Questionnaire for National Reports

Adán Nieto Martín

Please, for any question or commentary do not hesitate to contact:
adan.nieto@uclm.es

I. General Questions on Food Regulation and Criminal Justice

- 1) What is the concept of food that is adopted in your criminal law? Especially, is it a broad concept that covers any substance that may be digested or is it a strict definition, limited to substances of nutritional value? Are cosmetic and tobacco products included in it?
- 2) Are administrative sanctions used together with criminal sanctions in this area? Which criteria are used to distinguish between them? Is the *ne bis in idem* principle applied?
- 3) Are civil or administrative remedies effectively utilised or is criminal law the *prima ratio* against food fraud?
- 4) Are the main criminal sanctions located into the Penal Code or are they situated in the food law, too? (please only a general overview, for more detailed questions see II. B 1 1 y II C. 3)
- 5) Is criminal liability of legal persons provided for in food fraud cases? What is the relationship between the liability of natural and legal persons, especially in cases of negligent conduct of the individual? Is it cumulative? Which liability is more important in practice?
- 6) Are there reform projects in this area? What are their principal aims?

II. Criminal Law Dimension of Food Regulation

- 1) Briefly describe the three most-important cases of food fraud that have affected the health of consumers over recent years.
- 2) What is the practical importance of these offences, especially offences designed to protect food safety? If there are any statistics on the number of annual convictions, please refer to them.
- 3) Does your legal system contain one or more (criminal) offence(s) that punish the hoarding of food in order to alter its value?
- 4) In your country, is it a (criminal) offence to manipulate the price in markets for derivatives based on food commodities?
- 5) In the case of destruction of a particular ethnic group or holding a part of the population hostage by provoking a famine or contaminating water resources, would the definition of genocide or crime against humanity apply?
- 6) Have (criminal) sanctions for crimes against intellectual or industrial property been applied to farmers in your country that have reused seeds from earlier harvests?
- 7) Does your (criminal) law provide an aggravating circumstance intended to sanction unfair administration or undue appropriation of humanitarian aid? Are courts in your country competent to

judge these behaviours if committed abroad or if they involve funds from an international organization?

A) Criminal liability for deaths and injury as a consequence of the production and commercialization of harmful foodstuffs.

1) How is the factual causation ("but for or condition sine qua non test") between the harmful foodstuffs and the deaths or injuries established?

2) How have circumstances in which poor health is only diagnosed after a lengthy period of time resolved?

3) Are negligent actions of the victim taken into account in deciding on the criminal liability of the manufacturer of a defective product? Is any case law available on this?

4) Does a refusal to withdraw products in case the products' harmful effects were unknown when offering them on the market lead to criminal liability for death or injury?

5) Is there a duty of due diligence obliging operators that form part of the distribution chain to verify the quality of food or those substances that are supplied from further down the supply chain? Or, does the principle of trust hold true, such that, unless there are evident indications to the contrary, they can trust that everybody "plays their role well"? In cases where there is a duty of due diligence, could its infringement give rise to liability on account of the harmful food, although the firm or operator may not have participated in its adulteration?

6) Is the fact of being in compliance with the legal norms relating to product safety a ground of exclusion of criminal liability for the commission of crimes of manslaughter or negligent bodily harm (for example, in cases in which the legal norms surrounding the products are clearly phased out)? Can the same be said of technical regulations (soft law)?

7) In cases where the manufacturer is aware of the health risks attached to food products, can he be sanctioned for an offence committed with criminal intent or for an offence that carries the same sentence as an offence committed with criminal intent? The manufacturer's awareness does not imply that he accepts or wants the harmful effects to manifest.

B) Other crimes against food safety.

B.1 Questions of legislative technique

1) Are offenses against food safety found in the Criminal Code or in special laws? Which criminal definitions exist for crimes against food safety?

2) Does one need to infringe upon food regulations in order to commit an offence against food safety?

3) Is it considered that the application of criminal norms to food safety law satisfies the expectations of legal certainty? Please briefly refer to any discussions on this topic among academics or policy makers.

4) What sort of criminal offences (violation, felony, misdemeanor...) constitute the most-important offences to sanction the production or marketing of fraudulent foods?

B.2 Description of behaviour and sanctions

1) Do definitions of offences against food safety distinguish between the different steps in the food production and distribution chain (production, distribution, transport, storage, presentation to the consumer, etc.)? Are there, in your judgment, important gaps: for example, the adulteration of a product as a consequence of not having used appropriate storage or means of transport is not sanctioned?

- 2) Are there specific criminal definitions that sanction the traffic of prohibited substances, because of the danger that they may enter the human food chain (pesticides, fattening substances, prohibited hormones, cattle feed, additives...), even though they have still not been used?
- 3) Is the non-withdrawal of harmful foods sanctioned, the harmfulness of which became known after it was made available to consumers?
- 4) Do the offences defined to protect food safety require some particular quality in the perpetrator? Are they special crimes or can anyone commit them?
- 5) Are there offences where a regime of objective liability is applied? In case subjective liability is necessary, what does it consist of?
- 6) Is there an offence of poisoning in which a person intentionally adulterates food or water supplies with the purpose of inflicting death or serious harm to the health of an indeterminate number of people?
- 7) Can legal persons be held criminally and/or civilly liable for these crimes? Is it the legal person, or the physical person, or both, who should be held liable for these crimes? Are legal persons liable for these crimes? Is it frequently only the legal person that is punished or the physical person or both?
- 8) In case the offence was committed by a subsidiary company, can the parent company be liable?
- 9) What are the most-frequent sanctions for this crimes? As well as prison sentences or fines, are other measures imposed such as closure of shops, injunctions etc..?
- 10) Is the participation of organized crime frequent in the production, distribution, transport, storage, etc. of harmful foods?

B.3 Principle of precaution and assessment of health risks

- 1) Does the application of criminal law always require recognition of an actual danger to consumer health or is the production and/or marketing of products sufficient in itself, which would (hypothetically), in the case of consumption, be harmful?
- 2) Does the severity of the sentences increase in the last link of the food chain that brings the product to the consumer or is it of greater relevance to those who have prepared, stored or trafficked harmful foods?
- 3) If a food (e.g. a novel food) needs authorization for its commercialization, would it be an offence to commercialize it without prior authorization? If yes, is this regulated in your criminal law or other law(s)? Please specify.
- 4) Does it constitute a criminal offence to market foods in breach of food regulations that enforce the principle of precaution, without demanding further confirmation of harmfulness in the criminal context?
- 5) How is the harmfulness of a product determined? Does it have to be harmful for consumers in general or is it enough for it to be harmful to a particular group (children, people with kidney disease...)?
- 6) Do sanctions apply to making food available to consumers that is unfit for human consumption, although not necessarily harmful?

C) Food fraud

- 1) Describe the three most-important cases in the past few years in which food has been sold in a fraudulent manner to consumers. Which cases are most frequently brought before the courts? What sanctions are usually applied? Please specify type of sanction and amount/length.
- 2) Does your legal system foresee offences other than fraud (which requires an effective loss of patrimony), which are intended to punish the commercialization of food that, because of its presentation, may be misleading with regard to its quality and quantity?

- 3) If so, are these offences described in the Penal Code or in special laws? What type of criminal offences (infractions, felonies, misdemeanours...) constitute the most- important offences that sanction the production or sale on the market of fraudulent foods? Describe the sentence foreseen for the offence or the main offences of misleading food advertising. On the sentencing grading in your country, do you consider that those crimes are of high, average, or low seriousness?
- 4) In cases where your national legal system foresees provisions to sanction misleading advertising or deceptive marketing of foods, what are the product characteristics to which deception can refer? Especially take into account if it can be linked to the following aspects:
 - Quantity and quality of the food (horse meat instead of beef)
 - Origin of the ingredients of the product
 - Denominations of origin. Does criminal law in your country protect the denominations of origin of other countries?
 - Nutritional values and effects (slimming products ...)
 - Natural or ecological nature (free of certain substances, waste products, free of GM foods)
 - Medicinal properties of the food
 - Food production that is respectful of basic working rights and other human rights (fair trade)
 - Other aspects.
- 5) Do the sanctions that are envisaged vary in accordance with the aspect of the food product at the centre of the deceptive marketing campaign? Is there a special definition or aggravating factor for those cases in which false or misleading marketing can affect consumer health?
- 6) Do these offences require that deceptive advertising of sufficient significance to mislead the consumer be demonstrated? How is the type of average consumer defined, at whom the misleading advertising is directed?
- 7) Who are the offenders in these crimes?

III. International Trafficking of Foods and Harmful Substances

- 1) Is it an offence in your country to market foods that are legally produced in other countries, but that contravene the legislation in force in your own country?
- 2) Is it legally acceptable to produce food in your country destined exclusively for export, with significantly lower levels of food safety than legally required at home, but which are legal in the country to which they will be exported?
- 3) Is it legally acceptable for legal persons –or their subsidiaries- to be able to produce or to distribute foods in other countries, with a notably lower food quality than legally required in the country where those legal persons have their headquarters?
- 4) Can hormones, herbicides or other substances that are illegal because they are harmful to health in your country be produced or exported to other countries where they may be acceptable?

IV. Prevention and Enforcement

- 1) What is the role of the food inspectorate in the prosecution of these offences? To what extent does the instigation of criminal proceedings depend on its active involvement?
- 2) Can consumer organizations participate in the criminal proceeding?
- 3) Is there an agency that specializes in investigating food fraud? What are its functions? What are its powers of investigation? Does it have the possibility of cooperating with similar (administrative) agencies from other states? What is the role of this agency once the criminal proceeding is underway?
- 4) Are there specialized police units, prosecution offices or tax inspectorates?

Section III: Criminal Procedure

**XX AIDP International Congress of Penal Law
Criminal Justice and Corporate Business**

**Prevention, Investigation, and Sanctioning
of Economic Crime
– A Comparative Analysis of Major Normative Control Systems –**

Questionnaire

Ulrich Sieber

OUTLINE AND TEMPLATE FOR COUNTRY REPORTS

**Alternative Investigation and Sanctioning Systems
for Corporate and Corporate-Related Crime in**

..... (Country)
Author:

I. Introduction

A. Development and impact of economic crime

Please give a short introduction to the factual problems surrounding economic and corporate crime, delinquency and irregularities in your legal order, if possible with references to statistics on cases, extent of damage, etc. As emphasized above, the scope of this overview need not be limited to purely criminal activities such as are usually prohibited in the criminal law but can also include other economic and corporate delinquency or irregular behavior. It can inclose specific sectors, such as infringements of competition and cartel law, banking law, telecommunication law, subsidy law, agricultural law, consumer protection, etc.

B. Main problems controlling economic crime

Please summarize the legal problems and obstacles to criminal justice in dealing with economic and corporate crime, especially as regards preventive forms of crime control, criminal investigation, criminal prosecution, and criminal adjudication. Is criminal law considered satisfactory? Are there reasons for exploring alternative solutions beyond the traditional means of criminal law in your country?

C. Measures of legal reform

What has the legislature done to improve the control of economic and corporate crime, delinquencies and irregularities (only major changes)? Are there any alternative regulations, sanctioning, or investigation regimes designed to implement a more effective legal policy in the field of economic and corporate activities? Are there any evaluations or reports on the practical impact of such measures? Are any reform measures planned?

D. Overview of normative control regimes

Are any alternative systems or regimes for preventing, investigating, prosecuting, and adjudicating economic crime and delinquency applied or proposed in your country (e.g., criminal law, law of regulatory offences, administrative sanction law, different areas of administrative law, civil law)? Are

these systems defined or developed in a systematic way? Please give only an enumeration of the alternative mechanisms that currently apply to economic and corporate crime. Then, please indicate which of these regimes will be dealt with in the following report.

II. Criminal Law

Model template, based on a common meta-structure, by which to compare the normative systems for controlling economic crime:

The following model template is formulated in a general (and not in a criminal law specific) way. It should be used to describe both the system of *criminal law* as well as the various *alternative legal regimes* thus facilitating the comparison of regimes and legal orders. This means:

- When using the template to discuss the *criminal law system*, the focus should be on those issues whose treatment under the alternative systems discussed subsequently (in this or the other country reports) deviates from the criminal law standards. Please do not give long, general descriptions of elements in your legal system that are not significant for the *comparison* of the various investigating, prosecuting, and sanctioning systems. Please try to anticipate differences!
- When using this template to describe *alternative investigating and sanctioning systems* (infra III., IV., etc.), the text should emphasize and explain the differences between these systems and the criminal law standards discussed previously.
- In this way, the criminal law system should not only be the reference point for analyzing and evaluating the alternative sanctioning systems (which can be summarized in the final chapter), it should also be decisive for one of the main questions in the field of legal policy, namely, deciding whether the various broad safeguards of criminal law should be limited to the field of criminal law (sanctions), however defined, whether they can also be applied (directly or analogously) to other types of alternative sanctions, whether functional equivalents of these safeguards can be based on other grounds, or whether resort to other legal regimes can indeed avoid the application of these safeguards.

A. Aims and general characteristics of the legal regime

What are the aims of the sanctioning and investigating system under study (e.g., repression, prevention – such as by means of inchoate criminal offenses – asset recovery for eliminating unjust enrichment, information gathering)?

What are the characteristics of this legal regime? Which kinds of conducts (in theory and in practice) are required in order for the sanctions of this regime to be applied (e.g., certain extent of social harm, ethical blameworthiness of the act, creation of a future danger, just illegal behavior)? Do these characteristics have consequences for legal safeguards?

Please give only a short answer here for characterizing the systems; details may follow below (esp. under B. and C.).

B. Sanctions and their substantive requirements

1. Types of sanctions

What kinds of sanctions are provided by this system with respect to economic and corporate crime?

Explanatory note: Please note that the term “sanction” is used in a very broad sense to encompass any detrimental effects. Thus, it includes secondary penalties and other consequences, such as professional bans, corporate dissolution, supervision of business activities, public announcements (“naming and shaming”), blacklisting (e.g., with respect to public procurements), withdrawal of licenses, reporting obligations, asset recovery and confiscation, purely preventive measures, (normal, double or treble) damage recovery etc.

2. Substantive requirements and safeguards for imposing sanctions

What are the requirements of substantive law for imposing sanctions with respect to the prohibited conduct? (e.g., past infringement of specific rules protecting an important legal interest, existence of an imminent concrete danger, anticipation of a future danger, a specific organizational responsibility due to status as a financial institution)? What are the substantive limitations and safeguards? E.g., culpability, proportionality? Must the specific requirements be described precisely by law (*nullum crimen sine lege*) or does a general clause suffice?

3. Sanctions against companies and other organizations

Can sanctions in cases of economic and corporate crime be imposed only on natural persons or on natural persons and companies or only on companies? What are the basic requirements for sanctioning natural persons (e.g., personal culpability) and companies (e.g., failure to fulfill supervisory duties, vicarious liability of an employee)? What kinds of sanctions are possible? Are sanctions against legal persons based on the same concepts and requirements for responsibility as sanctions against natural persons?

C. Procedures and their safeguards

1. Institutions and actors

a) Investigating authorities

- Which authorities are tasked with the investigation of cases of economic and corporate crime?
- Are the same authorities responsible for the investigation of natural persons and companies?
- Are these authorities specialized in the respective field (e.g., special police force)?
- Do these institutions and especially their officers deal with such cases independently (e.g., comparable to a judge) or are they subject to the orders of their superiors? If they act independently, are there measures to secure this independence? If yes, what are they?
- Are the officers and state officials recruited from a specialized administrative institution? Are they institutionally or in another way (e.g. working in the same organization or the same building) connected with any other (specialized) institutions acting in this area?
- Do these authorities have legislative, executive, judicative and sanctioning powers? If yes, what are they? To whom do they transfer their cases?

b) Prosecutorial authorities

See questions under a); if the authorities for a) and b) are the same, the questions may be answered together (please avoid unnecessary repetition and use cross-references).

c) Deciding (esp. adjudicating) authorities

See questions under a); if the authorities for a), b), and c) are the same, the questions may be answered together (please avoid unnecessary repetition and use cross-references).

Esp. in case of so-called independent regulatory and supervisory administrative bodies:

- Is there any division between investigation, prosecution, and decision-making within the administrative body?
- If yes, how separated are they from each other?
- What are the factors that determine the amount of punishment, the amount of the sanction?
- Must a reasoned decision be given?

- Are the decisions directly final and enforceable? Does enforcement require any other administrative or judicial approval?

d) Control authorities and range of control

See, questions under a), especially: Are these authorities courts or administrative bodies?

In addition:

- What (kinds of) remedies are there to review the imposition of the sanctions described under B) (e.g., appeal before administrative authorities or before a higher court)?
- To what extent can and does the aforementioned control mechanism scrutinize the decision (e.g., standard of review: full or limited review of the facts or only review of the application of the law)?

2. Investigative powers and duties to cooperate

a) Investigative powers

- Where and how detailed are the relevant powers codified? Is there a general clause?
- What investigatory powers does the authority have in cases of economic and corporate crime? Please do not provide extensive descriptions of the ordinary criminal law arsenal, as the study is primarily interested in deviations from the criminal law standards within specific regimes. Please enumerate only the most relevant powers (e.g., interrogation of witnesses, search and seizure, interception of telecommunications, video surveillance, online searches, access to bank accounts, bank data or specific data banks).
- Who decides and/or authorizes these decisions (administrative body, prosecutor, judge)?
- Can the responsible institutions start investigations by means of data mining, thus identifying suspicious activities (e.g., by risk analysis) without a concrete suspicion or a concrete danger?

b) Duties to cooperate and right against self-incrimination

- Does the investigated (natural and legal) person have a duty to cooperate? If yes, what are they? How can these duties be enforced (e.g., by which administrative or criminal sanctions)?
- Does the principle of *nemo tenetur se ipsum accusare* or another right against self-incrimination apply?
- Can information obtained by means of a mandatory duty to cooperate (e.g., in the field of taxation) be used for the imposition of sanctions on the investigated person or a third party under a different regime? Or do such cooperation duties render the evidence obtained thereby inadmissible?

3. General procedural safeguards

Note: The following answers should not only deal with criminal procedural law. If possible, please indicate also to what extent legal safeguards are prescribed by constitutional law (superior to normal law).

a) Privileges against coercive powers

- Does the law provide for (e.g., testimonial) privileges for relatives, special professions (e.g., attorney, accountant), or the accused (no details please, just a general answer with some examples)?
- How are these privileges applied if legal persons are investigated or prosecuted?

b) Proof of claim

- What is the standard of proof? Who has the burden of proof?
- To what extent can the investigated person request the additional taking of evidence or initiate further investigation?
- Is the presumption of innocence applicable?

c) Access to the file

- (When) is the suspect informed of the proceedings?
- Does the investigated person and/or the person's lawyer have full access to the file? At what point does the investigated person have a right to such access (e.g., from the beginning of the investigation, after the conclusion of the investigation)? What restrictions apply to access to the file during the investigation and during court proceedings?

d) Right to be heard and oral hearing

- Does the investigated person have a right to be heard, to comment on the evidence, to present evidence? At which moment(s) do these rights apply? How comprehensive are these rights (e.g., is the authority obliged to reply to the investigated person's objections)?
- Can the duration of the the final words or other interventions of the investigated person be limited?
- To what extent does the investigated person have the right to an oral hearing or oral proceedings? What limitations apply to such a hearing?

e) Secret evidence

Can secret evidence (i.e., evidence that is not fully disclosed) be used to the detriment of the investigated person, either for triggering investigative measures or in the final decision?

If yes, what procedures are used (e.g., *in camera* procedures, using hearsay evidence of intermediaries, anonymous witnesses, analysis of written statements of witnesses)?

f) Transparency

To what extent is the procedure as such public or confidential? Are files, (possible) hearings, and decisions to denounce open to the general public?

g) Companies and other organizations

- To what extent do the aforementioned safeguards also apply to companies/organizations (e.g., lesser standard of proof in proceedings against companies, no right against self-discrimination)?
- How do privileges for natural persons affect proceedings against companies/organizations?

4. Discretion to commence and to stay proceedings

- How are cases selected?
- Is the decision of the competent authority to initiate an investigation in a case of economic and corporate crime mandatory or discretionary? Is this decision regulated by specific laws and/or principles (e.g., the principles of "legality" or "opportunity")?
- (How) can the authority suspend or stay the proceedings on a discretionary or a legally defined basis? Is it possible to engage in deferred prosecution agreements, non-prosecution agreements, other consensual proceedings, and informal settlements? How are these procedures legally regulated?

- Are there provisions or practices for granting impunity or leniency to crown witnesses (e.g., with respect to whistle-blowers or informants in corruption cases)?
- Are the aforementioned discretionary powers used to achieve specific aims (e.g., ensuring future lawful behavior or the fulfilment of other conditions by the investigated person)?

5. Relationship with other national and international legal regimes

a) Transfer of evidence within the national legal order

Can evidence gathered in the regime under study be used in other regimes (criminal law, administrative law, civil law, etc.) and vice versa? For example, can information obtained by means of telephone interception or *cooperation duties* of the investigated person within one sanctioning system (see above) be used in other sanctioning systems (and especially in criminal justice)?

b) Ne bis in idem within the national legal order

Do decisions of other legal regimes justify the application of “ne bis in idem” and vice versa?

c) International cooperation

What is the regime of international cooperation with respect to foreign institutions in the field of criminal justice and alternative regimes?

D. Evaluation

1. Safeguards

As noted, the above answers should already indicate whether legal safeguards are prescribed by constitutional law (superior to normal law). Please, summarize the range of constitutional, procedural and other legal protections of the respective system here. Please specify whether the safeguards are only applicable to criminal law (sanctions) or whether they apply to all types of sanctions. You may also indicate the extent to which safeguards are governed by other international legal regimes, e.g., the ECHR; however, we hope to receive a special, generally applicable report on ECHR protection.

2. Efficiency

How favorably is this system judged in your country (e.g. by practitioners, by academia, by you)?

3. Overall evaluation

III. Administrative criminal law

Model Template:

Please copy the above template here and use it for this regime as well.

Please emphasize and explain the differences between this system and the previously described criminal law standards, especially those with respect to efficiency and legal safeguards.

Please indicate whether there is no difference to the criminal law system (important for the comparative analysis).

IV. Asset forfeiture and confiscation

Model Template:

Please copy the above template here and use it for this regime as well.

If your country has various asset forfeiture systems (e.g., criminal, purely preventive, non-conviction based recovery of unjust enrichment), you can discuss confiscation as a criminal sanction above under II. (with the other sanctions of criminal law) and nonconviction based confiscation here; you may also discuss both regimes here.

Please pay special attention to the standards of proof (especially proof with respect to the relationship between a crime and the confiscated proceeds). Do constitutional guarantees regarding the protection of property have an impact on these regimes?

V. *Optional, e.g.:* Compliance regimes

Model Template:

Please copy the above template here and use it for this regime.

Using the template for the description of private compliance regimes might require some functional analysis and adaptations (see supra in Part 1): *In compliance regimes, the institution imposing sanctions is the company*. Respective sanctions are not only internal sanctions against employees but also the transfer of investigation results to the state administrative or criminal justice system. Functional equivalences for coercive powers are, e.g., the questioning of employees (with or without "Miranda warnings"?) and the screening of their computer systems. Possible limits to these investigation methods might result especially from constitutional law, labor law, and data protection law.

VI. *Optional:* Other regimes

Model Template:

Please copy the above template here and use it for this regime as well.

If you wish, you can describe other investigation and sanctioning systems that are of specific importance or that you consider interesting in your legal order (see Part 1). E.g.: purely preventive regimes, such as listing mechanisms, reporting mechanisms against money laundering, special financial market regulations, cartel regulations, etc.

VII. Analysis and summary

In a final chapter, please compare the *effectiveness* and the level of *legal safeguards* of the various regimes that exist in your country (e.g. by using partly the structure of the above template) and, in light of this, formulate legal policy recommendations.

You can also briefly reflect on the following aspects (unless they are subject to special reports, see below under Part 3 C.):

1. Identifying criteria to distinguish (criminal law) punishment from other sanctions in order to determine the scope of criminal law guarantees.
2. Analyzing whether the various safeguards of criminal law are limited to a field of criminal law (sanctions), whether they can also be applied (directly or analogously) to other types of alternative sanctions, whether functional equivalents of these safeguards can be based on other grounds, or whether resort to other legal regimes can indeed avoid the application of these safeguards. Example: the legitimacy of applying different standards of proof in criminal, civil, and administrative law.

PART 3 ADDITIONAL SPECIAL REPORTS

The analysis of legal regimes (based on country reports) dealt with above can be supported by additional special reports. Proposals for such reports should be sent to the general rapporteur (u.sieber@mpicc.de). Please do not commence with a special report before prior approval of the general rapporteur. The special reports might deal with specific legal orders or specific cross-sectional problems (especially safeguards) supporting the above-mentioned aims of the project:

I. Reports on specific legal orders

Reports on specific legal orders might deal with special sanctioning regimes (or just one individual sanctioning regime) of an international or supranational legal order. Examples are:

1. Specific reports on European Union law:

E.g. European antitrust law, administrative sanctions for the protection of the EU's financial interests (including blacklisting of public tenders, license registration and withdrawal, professional restrictions and disqualifications), financial market regulation, insider trading, single supervisory mechanisms

2. Smart sanctions of EU and UN law:

Especially travel and financial restrictions

II. Reports on specific topics

1. Civil damages as sanctions

Especially under the law of the United States of America

2. Investigations under anti-money laundering regimes or regimes against the financing of terrorism

3. Investigations by intelligence services

The possibility of these special reports should not prevent you from also dealing with these topics in your country report.

III. Reports on special safeguards

1. Identifying criteria to distinguish criminal sanctions from other (e.g. administrative or civil) sanctions in order to determine the scope of criminal law guarantees

2. The legitimacy of differing standards of proof in criminal, civil, and administrative law

3. The circumvention of legal safeguards as a result of the growing crime control role within the private sector

The possibility of the following special reports should not prevent you from also dealing with the following topics in your country report.

Section IV: International Criminal Law

**XX AIDP International Congress of Penal Law
Criminal Justice and Corporate Business**

Prosecuting Corporations for Violations of International Criminal Law: Jurisdictional Issues

Questionnaire

Sabine Gless

A. Introduction

General Explanation

Jurisdiction must be based on a link between the alleged crime and the competence of the state that exercises judicial authority. Following the Westphalian sovereignty logic, territory has served as the predominant link, after it had gradually replaced the personality principle. In criminal law, however, concurrent jurisdictional claims have always been present and have recently gained new importance due to a movement of holding corporations accountable not only for domestic but also for international core crimes (those included in the jurisdiction of the International Criminal Court, ICC), as well as treaty crimes (for instance, corruption, environmental crimes, trafficking crimes, financial crimes, tax crimes, etc.). The U.N. Human Rights Council set a global standard by adopting the United Nations Guiding Principles on Business and Human Rights (UNGPs or Ruggie principles), which address possible adverse impact on human rights linked to business activity. According to that standard not only have states a duty to protect human rights, but corporations must respect them, too, and victims of business-related abuses must have access to a legal remedy.

Your report should explain your country's approach to jurisdictional issues related to Corporate Criminal Responsibility (CCR), focusing on cases of alleged international law violations by corporations, with a special emphasis on extraterritorial jurisdiction. The questionnaire, however, also asks about the general framework of national law as the basis of cross-border prosecution of white-collar crime.

B. General Framework for Prosecuting Corporations for Violations of International Criminal Law

Please, briefly cover your country's law in theory and in practice, as well as the public debate with regard to the task of prosecuting corporations for core crimes and/or "treaty crimes" committed abroad, using the following questionnaire ...

I. Legal Framework & Relevant Actors

1. Legal Rules governing the prosecution of corporations – in a nutshell

a) Substantive Criminal Law establishing criminal liability

What is the doctrinal basis (attribution of individual fault to the corporation, or "corporate blame")? Is corporate criminal liability limited to specific offenses?

b) Procedural Law governing criminal prosecution & Actors (Prosecution and other authorities, victims, NGOs, courts)

What is the procedural framework for prosecuting a corporation? Are there special rules, especially for fact-finding? How is the corporation represented in court? Is it possible to try a corporation (or an individual) in absentia?

2. Principles of Jurisdiction /Building the nexus – in a nutshell

Please explain your country's general rules and laws on jurisdiction with regard to transnational crime. What is the underlying rationale? Is your country traditionally actively interested in prosecuting offenses committed abroad? Is the passive personality principle recognized? May the set-up of criminal liability of corporations combined with the concept of territorial jurisdiction create areas of impunity for responsibility or do they rather built up vehicles for foreign claims?

a) Defining jurisdiction – in a nutshell

How is jurisdiction specified in your national system? Does your country distinguish between jurisdiction to prescribe and jurisdiction to adjudicate?

3. International Law / Human rights framework

Please indicate the relevant international conventions/ human rights framework that may determine your country's prosecution of "core crimes" or "treaty crimes".

4. Framework for Prosecuting a Cross-Border Case – in a nutshell

How is a cross-border case built in your criminal justice system? (When) Must the defendant be present? Is there a difference between cases against individuals and cases against corporations?

5. Prominent cases, media coverage

In your country, have prominent cases triggered a public debate? Does the media discuss the usefulness and legitimacy of prosecuting corporations for violations of international law abroad?

6. Statistics

Do prosecution or court statistics contain data on CCR, especially on prosecution/conviction of corporations for violations of international criminal law?

7. Public debate on Corporate Social Responsibility?

Has the accountability of corporations and their compliance with the law and certain ethical standards been subject to recent debate? Has there been a debate on CCR, including the exclusion of CCR in Art. 25 ICC Statute? More specifically, has there been a debate on differences between corporations' accountability for their domestic conduct and their conduct abroad? Is there a political movement concerning CCR? (cf. in Switzerland <http://www.droitsansfrontieres.ch/fr/agenda/>). What is the role of NGOs in that regard?

C. Holding Corporations Accountable – the Jurisdictional Issue

I. General Jurisdiction / General Aspects of Jurisdiction

1. General Jurisdiction – Generals

Is there a general doctrine underlying the rules of jurisdiction? If so, is the decision on jurisdiction rather based on a "jurisdictional reasonableness"-approach primarily taking into account the affected states' interests? Or does the balancing of interests seek to do justice to the defendant? Does the prosecution of corporations for crimes allegedly committed abroad fit into that doctrine?

2. Territorial Jurisdiction

Is territoriality the standard parameter for establishing jurisdiction? If so, what is the historical context and the justification of the preference for territoriality? (e.g., right to be tried by one's peers? "Recht auf den gesetzlichen Richter?" Evidentiary concerns? National concerns?).

a) Legal Framework

What are the statutory rules defining territorial jurisdiction, and what is their historical context? Can territoriality be based on where the defendant has acted and/or where his act had its effect?

b) Practice; (High Court) Jurisprudence

How do courts handle territoriality, especially with respect to cross-border crimes? Do courts tend to restrict or broaden the concept of territoriality? Do they emphasize the "conduct doctrine" or the "effects doctrine"? Does case law address the concepts of "objective territoriality" (act has been initiated abroad, but completed on one's territory) and "subjective territoriality" (act has been initiated on one's territory, but completed abroad)? Does case law address the evidentiary problems of fact-finding abroad?

3. Extraterritorial Jurisdiction

Does your criminal justice system have a presumption against extra-territorial jurisdiction? If so, do courts take the presumption seriously? Which interests are recognized bases of extraterritorial jurisdiction (e.g., state interests affected, nationality of alleged offender)?

a) Active Personality (or Nationality) Principle

aa) Generals

If your country recognizes the active personality principle, what is the underlying rationale (e.g., avoiding impunity of nationals, protecting state's reputation abroad)? What are the constitutive elements of this principle? Does the law take into consideration whether the act also constitutes a crime according to domestic law? Does the principle extend only to serious crimes? Is the principle regarded as an exception and used reluctantly?

bb) Corporations and the Active Personality Principle

May corporations be held liable under the active personality principle, or does it extend only to natural persons? May corporations be prosecuted only for certain economic offenses? How is nationality of corporations established (e.g., "control theory", place of registration)?

b) Passive Personality Principle

aa) Generals

Does your country extend its jurisdiction in accordance with the passive personality principle? Is that principle regarded as having equal rank with other principles of jurisdiction? What are the requirements for jurisdiction under that principle? Does it only extend to serious offenses or only to terrorism? Is the principle regarded as an exception and used reluctantly (e.g., only if your country's nationals are not protected abroad, or if an alleged wrongdoer cannot be extradited)? Are there substitutes for criminal prosecution under the passive personality principle, e.g. tort claims?

bb) Corporations and the passive personality principle

May corporations be held liable under the passive personality principle, or does it extend only to natural persons? Is it applicable only to certain economic offenses? How is nationality of corporations established (e.g., "control theory", place of registration)?

c) Protective Principle

aa) Generals

Does your country extend its jurisdiction in accordance with the protective principle? Is that principle regarded as having equal rank with other principles of jurisdiction? What are the requirements for jurisdiction under that principle? What state interests are protected? Does the protective principle only extend to serious offenses or only to terrorism? Is your country concerned that the protective principle might be abused (by other countries), e.g., to prosecute political opponents? Does your country fear that the use of the protective principle could harm international relations?

bb) Corporations and the passive protective principle

Are corporations targeted under the regime of secondary boycotts, i.e. extraterritorial measures in order to enforce a (international) boycott (as for instance under the U.S. Helms-Burton Act)? Are there substitutes for criminal prosecution under the protective principle, e.g. tort claims?

d) Jurisdiction over military personnel and/or private military contractors

Does your country establish criminal law jurisdiction over persons acting under its military order? If so, does this jurisdiction apply in the same way to private military contractors or other outsourced services staff?

e) Vicarious Jurisdiction – Stellvertretende Strafrechtspflege

Does your country prosecute alleged offenders acting for another State, if extradition is not possible? If so, under what conditions?

4. Universal jurisdiction

Does your criminal justice system apply universal jurisdiction? If so, for which offenses? Do courts make frequent use of the universality principle? Is the principle applied even when the alleged offender is not present in your country?

Are there cases where the universality principle has been applied to corporations?

5. Other sources of jurisdiction

Has your legal system established other, “creative” grounds of jurisdiction in order to hold corporations liable? Has the effects doctrine been interpreted broadly in order to extend jurisdiction to foreign corporations? Do such bases of jurisdiction exist for typical white collar-crimes, for instance, violations of anti-trust law?

6. Transitional justice mechanisms

Are there special rules on extraterritorial jurisdiction for special justice mechanisms, e.g., truth and reconciliation commissions, local justice, reparation schemes for victims?

II. Jurisdiction for Prosecuting Corporations under International Law (UN Law, multi-lateral treaties)

1. General

Does your country base its jurisdiction on international treaty or customary law? Are there any requirements for establishing such jurisdiction (e.g., seriousness of the offence, evidence to be found in your country, international law demanding prosecution)? Is there an underlying doctrine supporting this jurisdiction? If so, is it a standard of “jurisdictional reasonableness” that primarily takes the affected states’ interests into account? Or is it a balancing of interests that seeks to do justice to the defendant?

2. Jurisdictions prescribed by International Humanitarian Law – Core Crimes

Has your country implemented the jurisdictional requirements of International Humanitarian Law? What are the constitutive elements? Are there any specifics?

3. Jurisdiction based on Customary International Law

Does your country acknowledge jurisdiction based on Customary International Law? If so, under what conditions and on which offenses?

D. Overlapping Domestic Legal Frameworks and the Prosecution of Corporations

I. Conflicts of jurisdiction – General

Please assess whether your system is rather dominant or reluctant in claiming jurisdiction in cross border-cases. Do you think that there is rather a problem of positive or of negative conflicts of jurisdiction?

II. Overlapping Domestic jurisdictions – in a nutshell

Can corporations be held accountable in collateral legal domestic frameworks (torts, administrative sanctions or) for providing financing or other involvement in atrocities abroad?

III. Conflicting International jurisdictions – in a nutshell

In your national system, do specific provisions or case law address problems of international jurisdiction conflicts, when prosecuting corporations for “core crimes” or “treaty crimes” abroad (either with regard to prosecution in another country, civil or administrative litigation or settlements in arbitration courts)?

E. Proposals for Reform of the Legal Framework of Jurisdiction

In your state, is there a discussion about the role of rules on jurisdiction for defending sovereignty or for fixing global problems?

F. Conclusion

How does your criminal justice system generally address the issue of corporate criminal responsibility for acts committed or having effects abroad? Is there a movement – inside or outside the legal community – in favour of holding corporations accountable in such cases? Are there general doctrines that deal with this situation? Are reforms of the law foreseeable?

General Explanation:

It is our goal to present every criminal justice system adequately in the overall project. The specific issue we want to discuss on the basis of the country reports is the tension between traditional approaches to jurisdiction (generally based on territoriality) and more-recent movements toward extra-territorial jurisdiction, motivated by a wish to protect human rights beyond national borders, possibly even holding companies accountable for their involvement in human rights violations. I would suggest that we take the Ruggie principles (see introduction) as a benchmark for this discussion.

For documentation, please use footnotes and give full citations to page numbers of text cited. If certain aspects of jurisdiction are not well documented in your country, please feel free to use what sources you can find.

If you would like to modify questions or add more questions, please contact me at any time.

Thank you very much!