



INTERNATIONAL MEETING ON
EXTRATERRITORIAL LEGISLATION IN
RESPONSE TO INTERNATIONAL
DIMENSIONS OF CHILD SEXUAL
EXPLOITATION

Conclusions

The Ministry of Justice, Spain

in collaboration with

The International Bureau
for Children's Rights

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**International Meeting on Extraterritorial Legislation
In Response to the International Dimensions of Child Sexual Exploitation**

CONCLUSIONS¹

Madrid, 26-27 November 1998

1. Asked by the organizers of the meeting – The Ministry of Justice of Spain in collaboration with the International Bureau for Children’s Rights – I will intend to draw some conclusions from a meeting which proved to be both informative and enriching to the spirit of the participants. My conclusions can only reflect to a small extent the quality of the interventions and the intensity of the debate, in a topic which is very complex, causes great concern to the general public and where no easy solutions can be found.
2. The Minister of Justice of Spain, when opening the meeting, reminded us that the problem of child sexual abuse stems from a society which is in crises of values: society has forgotten the dignity of human beings in our modern society of which the child is the most vulnerable part; the situation is also aggravated by the economic conditions in the world – child sex tourism is facilitated by the difference between rich and poor.
3. All participants were in agreement with Judge Ruffo from the International Bureau for Children’s Rights that the key answer to the problems lies in considering the child as a subject and not an object. The real issue – as stated by Mr. Dionne, Director General of the Bureau, was to place the child at the center of our interest and put its interest at the forefront. From this fundamental point of departure, one could deduct most answers to the problems.
4. Participants were also reminded that there would be no change in the situation concerning child abuse unless there was a political will to back up reform proposals and implement them effectively. One could observe that governments lately had become more aware of the acute problems – 57 individuals met in Thailand in 1991 to form ECPAT (End Child Prostitution in Asian Tourism) whereas representatives of 122 governments met in Stockholm in 1996 to attend the World Conference – in particular within the European Union and, in a wider Pan-European context, the Council of Europe. It was however regretted by Mr. Debrulle, Director General of the Belgian Ministry of Justice, that the original intentions of the drafters had not been met during the negotiations of the Joint Action in traffic in human beings and sexual exploitation of children, adopted by the Council of the European Union on 24 February 1997. Nevertheless, important changes could be observed in the States’ legislation, for instance in relation to the question of extraterritoriality, where almost all Member States of the EU now had extraterritorial legislation in this field, in order not to let the criminals have safe havens.

¹ Prepared by Hans G. Nilsson, Head of Division, Judicial Cooperation DG H « Justice and Home Affairs », Council of the European Union. The opinions expressed are those of the author and not necessarily those of the EU institution for which he works. This is a slightly edited version of the oral conclusions drawn at the meeting.

5. These changes were due to a great extent to activities on the international arena, where in particular the 1989 UN Convention on the Rights of the Child, the 1996 Council of Europe Convention, the 1991 Council of Europe Recommendation and the 1997 EU Joint Action were particularly important. The EU had also put in place a financing programme (STOP – Sexual Trafficking of Persons) which had been given important financial resources. A recent initiative by the Austrian Presidency intended to make more efficient the combat against child pornography on the Internet.
6. The participants were also reminded of the perspective of new international conventions in the area, both within the UN – in the form of a Protocol to the 1989 Convention – and within the framework of the Council of Europe.
7. However important the work of international bodies may be, in particular as regards serving as coordinating instruments between the Member States and giving political impetus to action, it is at national level where the work must be carried out. The participants were reminded that the first responsibility to prosecute these odious crimes rested with the country where the offence was committed, which needed to have an efficient legislation.
8. However, there were still many problems in terms of legislation in many States, in spite of recent progress in particular through article 34 of the 1989 UN Convention. Problems relate to differences in legislation and difficulties to collect and use evidence. Coordination was difficult at both national and international level and judicial cooperation still presents substantial obstacles to an efficient prosecution of child sex offenders. The requirement of double criminality continues to create difficulties in prosecution (the age of consent differs from one state to another between 12-18 years) and it is often difficult to prosecute for instance tourists abusing children because of corrupt police or other officials. Problems of criminal procedure exist as well and video-link testimony is often only possible for rich and developed countries.
9. Seen from the child's perspective, as did the Child Ombudsman in Madrid, the catalogue of offences in national law was also not complete, for instance, as regards the offence of inciting to commit sexual abuse of children which was not yet an offence in all countries.
10. Participants were reminded that in legislation, a balance of interest must always be struck between the rights of the child and the rights of the offender. For several participants however, this balance of interest must always be made so as to favour the interest of the child. Professor Bueno Arus, Secretary General of the Spanish Ministry of Justice, said that the interests of the offender had been protected through international human rights instruments for more than half a century, whereas the interests of the victim had only been dealt with more recently in international and national legislation. One could wonder whether it was not time to assess whether the balance between offender and victim had been struck correctly and in particular when the victim was a child?

11. But legislation not enough, neither at international, nor at national level. It has to be implemented effectively and sufficient resources need to be given for its enforcement. Several participants expressed regrets at the low level of implementation of the 1989 Convention in spite of its fantastic ratification rate (about 190 countries have ratified). Even where laws had been adopted the greatest problems were in their effective implementation. Encouraging in this context was the steps which had been taken within the EU to evaluate how Member States had effectively implemented its international undertakings. The present evaluation exercise – on mutual assistance in criminal matters – would also be relevant in the context of judicial cooperation to combat child sex abuse.
12. Particularly important for an effective implementation of the laws are law enforcement officers. Interpol has set up a special group to study the problems and Europol will, since the Convention has now come into force from 1 October, play an increasingly important role to the Member States of the European Union. As suggested by Director General Debrulle, the EU should also consider how best to use the Member States' liaison officers, for instance by organizing regional meetings between them.
13. Sharing of information between law enforcement officers was important, as Mr. Lord, Chief of the child prostitution and obscenity section of the US Department of Justice reminded the participants, and "Operation Cathedral" had been particularly successful in this respect. 14 countries had been involved, more than 750.000 pictures had been seized (40.000 different pictures in one country) and law enforcement was able to continue to share information to ensure continued cooperation.
14. Operation Cathedral, hearing of child witnesses via video-link or through the use of taped evidence, show how use of modern techniques is important at all stages of criminal procedure. Investigators, prosecutors and judges should be encouraged – and given the resources – to use such modern techniques, particularly in the interests of the child. But not all countries have access to these techniques (the Council of Europe representative, Ms. Requena said that this was a particular problem in the countries of Central- and Eastern Europe) and hearing of a witness through video-link may prove to be too expensive to several countries involved. Perhaps the EU, for instance through the PHARE programme, could at least in applicant states to the EU play a role in this context?
15. Training of judges, prosecutors and law enforcement personnel is of vital importance to an effective implementation of decisions taken. It was encouraging to learn that a number of countries (United Kingdom, Germany, USA) had sent police officers to train their counterparts in Thailand, Philippines, Vietnam... although one could hope for a better coordination between these initiatives, also within each country. It was also encouraging to see that so much training material actually exist in the form of handbooks, manuals and videos. The participants saw a video produced by the National Society for the Prevention of Cruelty to Children, demonstrating good practice when children are witnesses. This video and other training material should be spread to interested professions like the judiciary, the Bar, Prosecutors and law enforcement so that an understanding is gained for the fact that the child has special needs within the framework of criminal justice.

16. Many NGOs were represented at the seminar and demonstrated that governments would do well to listen to their very knowledgeable representatives. ECPAT, Anti-Slavery International and THEMIS and the already mentioned Bureau perform tasks which are over and beyond the call of duty and proved that they can teach governments many things. One of these NGOs was not represented – “Lawyers without frontiers” – but was thought to have a role to play in these matters. In any case, it was considered that it was important that governments learn from the NGOs working on the field in these matters and that they support them and recognize their contribution to fight against child abuse.
17. In this context, governments were recommended to examine the role that these NGOs have to protect the rights of children and allow, where possible, the right for the NGOs to represent the children in court (in French : “constitution en tant que partie civile”). In fact, one could observe a trend in modern criminal procedural law in some countries to allow so-called victimless crimes, and crimes involving particularly vulnerable victims (like children) to be able to be represented by NGOs or other entities which were recognized as having that capacity. In particular, this solution would seem to be perfectly in line with the discussion which had been carried out by the EU within the framework of its adoption of the February 1997 Joint Action.
18. Another question which was raised was the importance of working together with industry, and in particular with the travel agencies. NGOs like ECPAT had sensitized industry to action and made it aware of its responsibilities. Of course here, like in many other instances of industry’s involvement in prevention of crime (cf the example of the banks’ obligation to report suspected money laundering under the Money Laundering Directive), industry would be reluctant in the beginning and argue that it “only did its job”. However, travel agencies in several countries had now realized that they facilitated (not in the sense of criminal law) the offences to such a degree that they had moral responsibility to become involved. This question merits further study and perhaps the Commission could give some further thoughts to how it could, within the framework of its responsibilities, add a further dimension to the work of the NGOs.
19. Other NGOs, such as THEMIS, in Strasbourg worked together with social institutions to further alleviate the burden on those that had been victims of those crimes.
20. Participants agreed that it seemed finally that the tide had changed in the long combat against sexual exploitation of children. All involved had now passed from “Indignation to Action” but that much still needed to be done. A multidisciplinary approach was needed and effective implementation of decisions that had already been taken. As the Minister of Justice said: We must continue to make the public aware of these crimes, pool our experiences and coordinate action. – The outcome of the present meeting constitutes a perfect example of this.

Madrid, November 27th, 1998