

MEETING OF MINISTERS OF JUSTICE
OR OF MINISTERS OR ATTORNEYS GENERAL
OF THE AMERICAS (REMJA)

OEA/Ser.K/XXXIV
CIBER-III/doc.5/03
June 24, 2003
Original: Spanish

Third Meeting of Group of Government
Experts on Cyber-Crime
June 23 and 24, 2003
Washington, D.C.

REPORT
OF THE THIRD MEETING OF THE GROUP OF GOVERNMENT EXPERTS ON
CYBER-CRIME

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(Washington, DC. 23-24 June, 2003)

BACKGROUND

The Fourth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-IV), held in Trinidad and Tobago in March 2002, recommended reconvening an initial meeting of the Group of Government Experts on Cyber-Crime, made up of government experts from all the Member States of the OAS.

Pursuant to the decisions adopted at REMJA-IV, this Group of Government Experts should follow up the recommendations formulated in that area by REMJA-III and consider developing relevant Inter-American legal instruments and model legislation to strengthen hemispheric cooperation in combating cyber-crime. The results and specific recommendations that emerge from the meeting should be presented for consideration by REMJA V.

Pursuant to what was decided by REMJA-IV, the General Assembly, during its Thirty-Second Regular Session, adopted Resolution AG/RES.1849 (XXXII-O/02) titled "Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas," resolution 2 c. of which instructed the Permanent Council to: *"Reconvene the Group of Government Experts on Cyber-Crime for the purpose of carrying out the mandates referred to in the REMJA-IV recommendations."*

The Permanent Council, through Resolution CP/RES. 839 (1359/03) convened the initial meeting of this Group of Government Experts, which was held at OAS headquarters in Washington D.C., June 23-24, 2003.

DEVELOPMENT OF WORK

The meeting was initially presided over by Dr. Enrique Lagos, Assistant Secretary for Legal Affairs of the General Secretariat of the OAS and was inaugurated by the General Secretary of the Organization, Mr. Cesar Gaviria. The text of his statement is attached herewith ([Annex I](#)).

Subsequently, Dr. Enrique Lagos yielded the floor to the participating delegations so the election of the chairman of the Group of Experts could proceed. The delegate from El Salvador suggested that Mr. Leonard Bailey, expert from the United States, assume the position. This suggestion was seconded by the delegations from Argentina, Colombia and Honduras and was adopted unanimously.

The agenda for this meeting was then approved, and is attached to this report ([Annex II](#)).

The Group of Experts then began its deliberations. Developing the third item on the agenda, Mr. Jorge Garcia Gonzalez, Chief of the Technical Secretariat for Legal Cooperation Mechanisms of the Secretariat for Legal Affairs, discussed the history of OAS work on cyber-crime; the mandate of the

* This document was approved in its entirety by the Group of Government Experts on Cyber-Crime at the meeting held on June 24, 2003.

Group of Experts; a review of the REMJA recommendations ([Annex III](#)); and the questionnaire on the subject and its results ([Annex IV](#)).

Then, developing the fourth item on the agenda, Messrs. Hervé Hurtado, Director General of Traffic and Contraband of the Cyber-Police (PFP) of Mexico and James Burrell, Chief, Cyber Division, International Investigations, US Federal Bureau of Investigation discussed the scope of the cyber-crime problem facing the member states.

The first of these presentations emphasized the work that the government of Mexico has done on this subject. Reference was also made to the creation of the Cyber-Police as an independent unit of the Federal Preventive Police (PFP) and a national diagnosis of the subject as well as global perspectives were presented.

Mr. James Burrell discussed North American policies on the subject, the role of the FBI and legal developments that have facilitated regulation of these crimes.

These presentations were preceded by a question and answer session between the presenters and participants.

Developing item five on the agenda, two round tables were conducted. The first was titled "Case Studies from Several Volunteer Countries on their Efforts to Combat Cyber-Crime." The second was titled "Open Discussion for Countries to Present Overview of Their Cyber-Crime Efforts."

The experts from Brazil, Colombia, Trinidad and Tobago, Chile, the United States, Antigua and Barbados, Peru, Ecuador, Mexico and Venezuela spoke on this subject and agreed on the need for greater international cooperation in order to unify concepts regarding these crimes, to share experiences and training programs directed to preventing, combating and punishing those who use computer systems and networks to commit crimes.

At the Chair's request, it was agreed that items seven and nine on the agenda would be dealt with during the Group's second day of sessions.

Mrs. Betty-Ellen Shave, Senior Counsel, Computer Crime and Intellectual Property Section, US Department of Justice, then gave a presentation on the Council of Europe Convention on Cyber-Crime. In addition to the content of this international legal instrument, the presentation emphasized the importance of such conventions for strengthening mutual assistance among the Member States.

Following the order established in the agenda, Mr. Donald K. Piragoff, Senior General Counsel, Criminal Law Policy Section, of the Department of Justice of Canada gave a presentation on Cooperation and Mutual Legal Assistance; the G-8 Group; and the 24/7 Contact Group. Mr. Piragoff pointed out the urgent need for greater international cooperation in this field. He indicated that such cooperation is necessary to introduce consistency and equivalence in concepts, criminal definitions and procedures in this area. He also emphasized that the starting point for this cooperation must be to strengthen developments within the internal legal systems of the Member States. He underlined how enormously important electronic information and data transfer media are at present and the resulting need to regulate practices relating to them

In completing his presentation, Mr. Piragoff pointed out that effective cooperation and assistance require the Member States to develop common definitions and investigative powers; to categorize the principal criminal definitions in this area; and to have legislation that respects human rights, policies that

facilitate information, and modern extradition procedures. This presentation is included as [Annex V](#) to this report.

The second day of work began with presentations from Internet Service Providers and concerned cooperation between these companies and the authorities charged with implementing the law. Mrs. Elizabeth Banker, Associate General Counsel, Yahoo and Mr. Hemanshu Nigam, Corporate Attorney, MSN/Hotmail, participated in this session.

During the first of these presentations, Mrs. Banker discussed the current relationship between the company she represents and authorities in the United States with respect to the legal framework regarding the files of subscribers to these services; how different legislation on this activity has been put into practice; the challenges for implementing the legislation; the importance of defining cyber or computer crimes; the growth in regulations applicable to companies of this type; and the type of information needed to meet international requirements. In addition, she emphasized the current importance of regulating cyber or computer crimes and pointed out the areas in which legislation on this subject has seen greater development in recent times.

Mr. Hemanshu Nigam, Corporate Counsel of *Microsoft*, then discussed, *inter alia*, the urgent need to create international cooperation platforms between Internet service providers and the authorities in the different States.

Mr. Todd Hinnen, Trial Attorney, Computer Crime and Intellectual Property Section of the US Department of Justice then discussed the general legal framework for combating cyber-crime. Discussions during this session covered subjects such as limits on investigative authority with respect to this type of crime; the interception of electronic communications; the collection of data transfer in real time; obtaining stored and non-stored content on computer networks; and requirements for providing electronic evidence, indications or proof to authorities that request them. At the end of his presentation, Mr. Hinnen pointed out how important it is that the Member States have rules that allow access to evidence of crimes, thus preventing this type of crime from continuing to increase and to invade individual privacy, a situation that not only harms individuals personally but also harms economies and financial systems ([Annex VI](#)).

Following the order established in the agenda, the Chair submitted for consideration by the Group of Experts a technical meeting proposal, within the OAS framework, on a legislative drafting session on combating cyber-crime. This presentation emphasized the benefits that programs of this type could have both within the inter-American context and for national legal systems ([Annex VII](#)).

According to the pre-established order of the agenda, consideration began on the meeting's recommendations. The draft resolutions were presented to the plenary session and discussed at length. Upon conclusion of the discussion, the recommendations that appear in [Annex VIII](#) to this report were adopted.

Developing the "Other Business" item on the agenda, a report was presented on the Conference on Cyber-Security that will take place in Buenos Aires, Argentina, July 28-29, 2003. On that occasion, presentations will be given on the progress made in the OAS context within the REMJAs, CICTE and CITEL, as well as in the private and academic sectors.

The Chair was then authorized to submit both this report and the recommendations adopted during this meeting to the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V).

The date for a subsequent meeting was then discussed. In this regard, the Chair and the Secretariat were authorized to notify the experts in due time regarding the date for this meeting, which will tentatively be held in early 2004.

It should be pointed out that there was significant participation in both formal and informal deliberations from numerous delegations, thus ensuring that there were contributions from the largest possible number of representatives.

Upon the conclusion of the "Other Business" item, this meeting was adjourned.

Washington, DC. June 24, 2003.