

中国法学会资助

Sponsored by China Law Society

The 17th International Congress of Penal Law
Conference Proceedings

第17届国际刑法学大会

文献汇编

(中外文本)

(Chinese-Foreign Language Version)

国际刑法学协会中国分会 编辑
国家重点研究基地中国人民大学刑事法律科学研究中心

Edited by

China National Group of AIDP

National Research Center of Criminal Jurisprudence of RUC



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图书在版编目 (CIP) 数据

第 17 届国际刑法学大会文献汇编/国际刑法学协会
中国分会, 中国人民大学刑事法律科学研究中心编辑.
北京: 中国人民公安大学出版社, 2005. 5

ISBN 7-81109-092-9

I. 第… II. ①国…②中… III. 刑法—法的理论—
国际学术会议—文献—汇编—汉、英 IV. D914.01

中国版本图书馆 CIP 数据核字 (2005) 第 051032 号

第 17 届国际刑法学大会文献汇编
国际刑法学协会中国分会 编辑
国家重点研究基地中国人民大学刑事法律科学研究中心

出版发行: 中国人民公安大学出版社
地 址: 北京市西城区木樨地南里
邮政编码: 100038
经 销: 新华书店
印 刷: 北京蓝空印刷厂

版 次: 2005 年 5 月第 1 版
印 次: 2005 年 5 月第 1 次印刷
印 张: 10.25
开 本: 880 毫米×1230 毫米 1/32
字 数: 290 千字
印 数: 0001~2000 册

书 号: ISBN 7-81109-092-9/D·087
定 价: 26.00 元

本社图书出现印装质量问题, 由发行部负责调换

联系电话: (010) 83903254

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前 言

2004年9月12日至19日,国际刑事司法领域的全球性盛会——第17届国际刑法学大会在北京举行。来自世界68个国家和地区的近千名代表,围绕“全球化时代刑事犯罪的挑战与对策”这一主题,进行了广泛深入的交流与研讨,达成了一系列重要的决议。本次会议因其层次高、规模大、议题广、人数多而成为国际刑法学协会历史上一次极其重要的会议。

第17届国际刑法学大会由国际刑法学协会和中国法学会共同主办,国际刑法学协会中国分会承办。本次会议的成功举行既是中国法学界与国际刑法学协会长期友好合作的典范,又是中国刑法学界面向世界、面向未来不断深化改革积极开放的新起点。

国际刑法学协会是一个非政府性学术团体,在国际刑事科学领域历史最悠久、影响最广泛,并在联合国经济与社会理事会享有咨询地位。国际刑法学协会曾多次参与联合国预防犯罪和罪犯待遇大会一系列重要文件的起草工作。国际刑法学协会由来自世界各地刑事科学研究领域各学科的教授、专家、律师和高级刑事司法官员组成。现有正式会员3000多名,分别来自99个国家,其中包括47个国家分会。按照国际刑法学协会章程的规定,每个国家只能有一个团体会员作为国家分会在协会参加活动。

我们和国际刑法学协会的合作交往由来已久。早在1984年,中国司法部就派代表出席了国际刑法学协会在开

罗举行的第13届国际刑法学大会。1987年，我应邀参加了国际刑法学协会在意大利锡拉库扎召开的死刑问题专题研讨会，期间和协会领导人就成立中国分会事宜进行了商谈，回国后即着手办理此事。1988年4月7日，经中国国务院批准，并在中国法学会的大力支持和协助下，国际刑法学协会中国分会正式成立。

国际刑法学协会中国分会的成立，使中国刑法学界与国际刑法学协会的交流合作有了一个很好的平台，使双方的合作更加密切，也更富有成效。我们积极稳妥地发展会员，迄今已有会员近百人；积极组团或派员参加了国际刑法学协会第14、15、16届大会及各次预备会；认真遵守协会的章程，履行分会和会员应尽的义务。就在和国际刑法学协会的合作交往不断加深的过程中，我们萌生了在中国举办一次国际刑法学大会，让世界各国的同行齐聚北京的想法。这一想法很快得到了中国法学会的首肯，并呈报中国政府有关部门批准。此后我们在国际刑法学协会1998年巴黎理事会和1999年匈牙利布达佩斯大会上提出了正式申请。2000年6月，在法国巴黎举行的国际刑法学协会理事会与执委会决定，第17届国际刑法学大会在中国北京召开，同时确定了会议的主题和各次预备会的议题。

本次会议的筹备得到了国际刑法学协会和中国政府各有关部门的大力支持。中国法学会很快成立了由会长韩杼滨为主席的组委会，着手进行会议的筹备。巴西奥尼主席、艾普秘书长应邀来华访问，为会议的成功举办出谋划策。中国法学会动员了下属各部门全力投入会议的筹备。中国法学会刑法学研究会、诉讼法学研究会、犯罪学研究会、中华全国律

师协会、国家重点研究基地中国人民大学刑事法律科学研究中心等也作了重要的贡献。

会议的盛况空前。中国全国人民代表大会常务委员会委员长吴邦国亲临大会常务委员会致贺词。来自各国的近 500 名嘉宾和我国的 500 多位同行在 7 天的会议期间围绕四个议题、两个圆桌会议专题进行了深入的讨论，最后通过了决议。会议期间，代表们参观了法院、检察院、监狱等，实地了解了中国改革开放以来法治建设的伟大成就；参观了故宫、长城、圆明园等，会后游览了西藏、西安等地，领略了古老悠久的中华文化。韩杼滨会长会前提出的“增进了解，扩大共识；充实内容，健全机制；广泛交流，加强协作；相互尊重，求同存异”的预期目标全部实现了。

本次大会是国际刑法学协会成立 100 多年来首次在亚洲举办，也是在一个发展中国家召开的大会。为了使本次大会的成果在国际刑法学协会今后的发展中继续发挥影响，为了进一步推进中国刑法学界与各国同行的沟通和交流，受中国法学会的委托，国际刑法学协会中国分会与中国人民大学刑事法律科学研究中心负责将此次会议的文献资料编辑出版，作为中国法学界对外开放、加强合作，也作为我们与国际刑法学协会长期友好合作的见证，其意义已经远远超出了会议和文集本身。

高铭暄 教授

第 17 届国际刑法学大会组委会常务副主席
国际刑法学协会副主席暨中国分会主席
中国人民大学刑事法律科学研究中心专职顾问

2005 年 4 月 25 日于北京

Preface

The XVIIth International Congress of Penal Law, which is a global grand forum in the community of international criminal law, was held in Beijing from September 12~19, 2004. Near 1000 participants from 68 countries and regions attended the congress and made comprehensive exchanges and studies on the topic "Challenges of crime in the era of globalization". A series of important resolutions have been reached. This is one of the most important congresses in the history of International Association of Penal Law (AIDP) because of its high level, large scale, far-ranging topics and multitudinous participants.

The XVIIth International Congress of Penal Law was sponsored by AIDP and China Law Society (CLS) and was organized by China National Group of AIDP. The success of this congress is a model of long-term friendly cooperation between Chinese legal community and AIDP as well as a jumping-off point of the deepening reform facing the world and future.

As a non-governmental academic organization with consultative status near the United Nations, AIDP has the longest history and most extensive influence in the field of international criminal jurisprudence. AIDP has participated many times in drafting important documents of the seminars on Crime Prevention and Control as well as on the treatment of criminals. The members of AIDP are professors, experts, lawyers and senior judicial officers from around the world. AIDP rallies more than 3000 members from 99 countries and 47 national groups. According to the statute of AIDP, each country can have only one collective member as the national group.

We have long-term collaboration with AIDP. As early as in 1984, deputies were sent by Chinese Ministry of Justice to attend the XIIIth International Congress of Penal Law held in Cairo, Egypt. In 1987, I was invited to attend the symposium on death penalty held by AIDP in Siracusa, Italy. During the symposium, I discussed with the leader of AIDP on the foundation of China National Group, which was embarked upon immediately after I came back to China. On April 7, 1988, with the ratification of China Council of State Affaires and the assistance of China Law Society, China National Group of AIDP was founded.

China National Group of AIDP offers a basis for the communication between Chinese legal community and AIDP, thus making the cooperation between the two sides closer and more effective. The number of our members has steadily increased to around 100. We have sent delegations or deputies to attend the XIVth, XVth and XVIth International Congress of Penal Law and each preparatory colloquium. As a member of AIDP, We also observe the statute of AIDP strictly and implement the obligation positively. During the furthering cooperation with AIDP, the idea came to us that an international congress of penal law be held in China and our colleagues from around the world be congregated in Beijing. This idea was soon approved be China Law Society and ratified by relative departments of Chinese government. Later we submitted our application to AIDP in the meeting of Board Directors held in Paris in 1998 and General Assembly held in Hungary's capital Budapest in 1999. In June 2000, the meeting of Board Directors and Executive Committee held in Paris made the decision that the XVIIth International Congress of Penal Law be held in Beijing. At the same time, the topic of the Congress and that of each preparatory colloquium were fixed.

The arrangement of this Congress got strong support from AIDP

and relative departments of Chinese government. The organizing committee was soon founded by China Law Society, and Mr. Han Zhubin, the president of which, assumed the office of chairman. The preparatory work was embarked upon. President Cherif Bassiouni and General Secretary Helmut EPP accepted the invitation and visited China to give counsel to the preparatory work. Each branch of China Law Society devoted to arranging the Congress. Criminal Law Research Committee of China Law Society, Procedural Law Research Committee, Criminology Research Committee, All China Bar Association and the Research Center of Criminal Jurisprudence of Renmin University of China (RCCJRUC) also contributed positively to the preparatory work.

The Congress was an exceptionally grand occasion. Wu Bangguo, President of the Standing Committee of National People's Congress presented himself and released congratulations. Near 500 participants from around the world and more than 500 colleagues from China made deep discussions on the topics for the four working groups and two round table topics during the seven day Congress. Resolutions were passed in the end. During the Congress, in order to let the deputies have a better understanding of the great achievement of legal construction since China's reform and opening-up, they were invited to visit courts, jails and procurator's office. They also visited the Forbidden City, the Great Wall and the Imperial Palace. After the Congress, some of them went sightseeing in such places of interest as Tibet, Xi'an and felt the history and modern days of this ancient civilization. "Enhancing comprehension, promoting understanding; enriching content, perfecting mechanisms; extending exchanges, strengthening cooperation; mutual respect, seeking common points while reserving difference", the object put forward by Han Zhubin, president of CLS was fully realized.

This was the first time that the Congress was held in Asia since the foundation of AIDP more than 100 years ago. This is also a congress held in a developing country. In order to conserve the effect of this Congress henceforth and to promote communications and exchanges between Chinese criminal law community and colleagues from other countries, China Law Society entrust the edit and publication of the proceedings of this Congress to Chinese National Group of AIDP and RCCJRUC. As a symbol of the opening-up of Chinese legal community and long-term cooperation with AIDP, the significance of this compilation goes far beyond the Congress and the compilation itself.

Prof. Gao Mingxuan

Vice Chairman of the Organizing Committee of the XVIIth
International Congress of Penal Law

Vice President of International Association of Penal Law (AIDP)

President of China National Group of International
Association of Penal Law (AIDP)

Full-time Consultant of the Research Center of Criminal Jurisprudence
of Renmin University of China

2005-4-25

Beijing

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第 17 届国际刑法学大会 组委会名单

主 席：韩杼滨 中国法学会会长

常务副主席：刘 飏 中国法学会党组书记、常务副会长
高铭暄 国际刑法学协会副主席、中国分会主席
陈光中 中国法学会诉讼法学研究会会长
中国政法大学教授

副 主 席：(按姓氏笔画排列)

刘家琛 最高人民法院审判委员会委员、中国法学会副会长

吉 林 北京市副市长

孙 谦 最高人民检察院副检察长、中国法学会副会长

孙在雍 中国法学会副会长

张业遂 外交部副部长

罗 锋 公安部前副部长、中国法学会副会长

段正坤 司法部副部长、中国法学会副会长

高宗泽 中华全国律师协会会长

秘 书 长：刘 飏 (兼)

副 秘 书 长：赵秉志 中国法学会刑法学研究会会长、国际刑法学协会中国分会副主席

张智辉 最高人民检察院检察理论研究所所长、国际刑法学协会中国分会秘书长

- 卞建林 中国政法大学教授、国际刑法学协会中国分会
 司库
 卢建平 国际刑法学协会副秘书长、中国人民大学教授
 谷昭民 中国法学会对外联络部副主任

委 员：(按姓氏笔画排列)

- 马艾地 北京市高级人民法院副院长
 方 向 中国法学会研究部主任
 王晨光 清华大学法学院院长
 刘振民 外交部条约法律司司长、中国法学会理事
 刘 剑 中国法学会办公室副主任
 朱建华 北京市司法局副局长、北京市监狱管理局局长
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 董福光 公安部警卫局局长
 甄 贞 北京市人民检察院副检察长
 雷晓路 法制日报社总编辑

List of the Organizing Committee Members of the XVIIth International Congress of Penal Law

Chairman

Han Zhubin President of China Law Society

Deputy Chairman

Liu Yang Deputy president of China Law Society

Gao Mingxuan Vice President of AIDP and President of China
National Group

Chen Guangzhong President of the criminal procedural law committee
of China Law Society, Professor of China U-
niversity of Politics and Law

Vice President

Liu Jiachen Member of the Judicial Committee of People's Su-
preme Court, Vice President of China Law Society

Ji Lin Vice Mayor of Beijing

Sun Qian Vice Procurator General of the Supreme People's Proc-
uratorate, Vice President of China Law Society

Sun Zaiyong Vice President of China Law Society

Zhang Yesui Vice Minister of the Ministry Foreign Affairs

Luo Feng Former Vice President of the Ministry of Public
Security, Vice President of China Law Society

Duan Zhengkun Vice Minister of the Ministry of Justice, Vice
President of China Law Society

Gao Zongze President of All China Lawyers Association

Secretary General

Liu Yang (pluralistic)