

CONSTRUCTING AN INTERNATIONAL WATCHDOG FOR PRIVACY AND DATA PROTECTION : THE EVOLUTION OF PRIVACY INTERNATIONAL

by

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Abstract

While instances of privacy violation throughout the world have increasingly developed common features that are international in nature, privacy advocacy has traditionally been pursued at a national level. The formation of Privacy International (PI) in Washington DC in March 1992 was the first successful attempt to create a global approach to privacy protection. This article explores the origins and structure of the organisation, and discusses some of the challenges recognised by its members.

Background

The period since the late 1970s has witnessed a steady increase in the passage of privacy and data protection legislation around the world. The OECD² and Council of Europe³ privacy principles form the basis of much of this legislation. Although the United Nations has yet to formulate a specific convention on data protection, the European Commission has recently developed a draft directive for application in the private and public sectors.⁴

Non Government Organisations (NGOs), however, have played only a minor role in the development of international protection of privacy. NGO involvement in privacy protection has hitherto been confined to national responses. Even within their own boundaries, very few countries have developed specialist privacy organisations. Amongst the most prominent and active of these are : *The United States Privacy Council*,⁵ *The Australian Privacy Foundation*,⁶ *Stichting Waakzaamheid Persoonsregistratie* (The

1 Honorary Associate, School of Law, University of New South Wales, Director General, Privacy International.

2 Guidelines on the Protection of Privacy and transborder flows of personal data.

3 Convention 108, Convention for the protection of individuals with regard to the automatic processing of personal data.

4 The Proposal for a Council Directive concerning the protection of individuals in relation to the processing of personal data was originally put forward in 1990. The amended version of the draft was released in October 1992.

5 A coalition of advocates and experts formed in San Francisco in 1991.

6 An advocacy body formed in Sydney in 1987 to campaign against the proposed national identity card system.

Netherlands),⁷ *ArgeDaten* (Austria), *The Canadian Privacy Network*,⁸ *The New Zealand Privacy Foundation*,⁹ and *Infofilia* (Hungary).¹⁰ Prior to 1990, only the Netherlands, Germany, Austria and Australia had established privacy NGOs at a national level. Public interest computer organisations, such as Computer Professionals for Social Responsibility (US) and civil liberties bodies, such as the UK Council for Civil Liberties (Liberty) provided much of the impetus for public awareness of privacy related issues.

In addition to the challenges historically faced by all human rights advocates, privacy advocates face two new difficulties of burgeoning proportions. The first is that information and information technology are, increasingly, trans-national in nature. The second is that traditional political responses at a national level to deal with privacy invasion have been eclipsed by the expanding international dimension. A more global response by non government agencies would logically be necessary in order to merely keep pace with privacy issues. Several attempts have been made (principally by academics) during the 1970s and 1980s to bring together non government privacy experts from around the world. However these efforts have been limited and short lived, leaving all international privacy liaison to the formal inter-government mechanism of the International Data Protection and Privacy Commissioners Conference, held each year in various locations around the world.¹¹

The Genesis of Privacy International

During the closing months of 1987, millions of Australians participated in one of the most extraordinary campaigns in their nation's history. The campaign was sparked by the federal government's intention to introduce a national identity card. For three months, the ID card dominated the media as thousands of people took to the streets in protest at the proposal.

The Card was to be carried by all Australian citizens and permanent residents (separately marked cards would be issued to temporary residents and visitors). The card was to contain a photograph name, unique number, signature and period of validity, and would have been used to establish the right to employment. It would be necessary for the operation of a bank account, provision of some government benefits, provision of health benefits, and for immigration and passport control purposes. A national population

7 Translated approximately to "Privacy Alert".

8 Network of experts formed in Washington DC in 1992.

9 A public association formed in Auckland in 1991 principally to lobby against proposals to introduce a national health card to be called the "Kiwicard".

10 Hungarian Data Protection and Freedom of Information Organisation.

11 The conference is chaired by the Commissioner of the relevant host country. The meetings tend to be extremely formal and take the form of an exchange of views and expertise, rather than a forum to develop policy.

register, data matching scheme and considerable holdings of personal data would accompany the card proposal.¹²

An unprecedented alliance of political extremes sparked a grass-roots movement against the scheme. Rallies formed on a daily basis, culminating in a protest of 30,000 people outside Western Australia's Parliament House.¹³ Before the end of the year, in the face of major protests, a political party revolt, civil disobedience, and a technical flaw in the legislation,¹⁴ the government abandoned the ID card proposal.

The Australian Privacy Foundation, a non-partisan group which had convened and directed the campaign, was severely handicapped throughout the campaign by the lack of international literature in this area. Throughout the campaign, vague references were constantly made to overseas protests against government ID card and surveillance schemes, but little or no substantial information was available to the campaign leaders.¹⁵

Over the following years, members of the Privacy Foundation continued to collect information from across the world on a variety of privacy related topics, but found that few international connections existed. Another dilemma faced by the Australian advocates was that academic data protection experts rarely had a working relationship with human rights and civil liberties organisations, making the collection of relevant information on popular issues very difficult. Individual contacts were useful, but the Foundation came to realise that there existed a gap in this area of human rights on the international scene.

In March 1990, then as director of the Privacy Foundation, I discussed with a small number of colleagues the idea of forming an international body

12 For more information and analysis of the Australia Card proposal see Graham Greenleaf, "The Australia Card : toward a national surveillance system" Vol 25, No 9 (NSW) *Law Society Journal*, p 24, Graham Greenleaf, "Lessons from the Australia Card : deus ex machina ? Vol 3, No 6, *Computer Law and Security Report*, pp 6-8; and Roger Clarke, "The resistable rise of the Australian national personal data system" Volume V, no 1, *Software Law Journal*, pp 29-59.

13 Simon Davies, "Big Brother", Simon and Schuster, Sydney, 1992 pp 30-47.

14 On 23 September, the parliamentary opposition revealed a technical flaw in the legislation that would have prevented the government from implementing the enforcement mechanisms of the card. The "first relevant day" of operation of the banking and Social Security function of the card was to be established by regulation. Any regulation could be disallowed by the opposition controlled Senate, thus ensuring that these crucial functions of the card could never be implemented. Although the government had a number of escape routes to circumvent the flaw, these were never pursued. See also Greenleaf *op cit*; Clarke *op cit*, and Davies *op cit*.

15 The Social Security Number situation in the United States, and the anti-census campaigns in the Netherlands and Germany, were commonly referred to, but the Privacy Foundation had no contact with advocates in these countries. Toward the end of the campaign, media organisations commissioned their correspondents in these countries to provide reports, but these reports were of little use for purposes of serious analysis.

to represent privacy interests. Crucial support for this ambitious scheme came from the outset from veteran Australian privacy expert Graham Greenleaf, who became deputy convener, and provided the initial international contacts. Having secured tentative support from European and North American experts by way of telephone conversations, I then travelled to eleven countries in Europe, Asia and North America to discuss the prospect of forming a World Privacy Network.¹⁶

The first of many meetings to discuss the idea was held in Luxembourg on March 26th 1990,¹⁷ just prior to the joint European Commission and Council of Europe conference on Data Protection and Computer Crime.¹⁸ Other meetings were conducted throughout the year in Washington, New York, London, Amsterdam, Ottawa, Auckland, Paris, Belfast, Bangkok, Toronto and Strasbourg.

The response to the proposal was extremely positive. All parties agreed that an international liaison was essential, and around thirty leading privacy, civil liberties and data protection experts from Europe, North America and Australia agreed in principle to help form the organisation. A letter circulated to these people at the time stated :

A wide range of views has been expressed about the most appropriate structure, membership, goals and activities of such an organisation. Decisions about these aspects must remain in the hands of the appropriate planning group. However, I feel we can assume that there is unanimous support for a greater degree of international communication and liaison in the privacy arena. We can also conclude that there is an equal degree of support for promotion and lobbying of privacy issues at an international level.¹⁹

Because no structure had been proposed for the initiative,²⁰ it was generally felt that, in the first stage, all those who had agreed to join the effort should form a Working Group responsible for the formation of structure and policy. By the end of 1990, this group was about eighty in number, and represented 28 countries.²¹

16 This and subsequent journeys were undertaken in a personal capacity, and were not sponsored or funded by any source. A full account of this activity was outlined in Privacy International's 1991 Interim Report.

17 Europa Hotel, Luxembourg.

18 The conference was held in the Jean Monet Centre, Luxembourg on March 27 and 28 1990.

19 Correspondence from S.Davies, 30 May 1990.

20 This was the case because no precedent could be found upon which a model for formal structure could be based. Additionally, there was some disagreement about the nature of the proposed organisation i.e. whether it should be an informal expert group or a membership based advocacy body in the nature of Greenpeace.

21 About half this group were academic experts, mainly legal professionals, with half of the remainder being human rights advocates, and the other twenty or

An editorial in the U.K. based *Computer Law and Security Report* remarked :

The development is to be warmly welcomed as a serious attempt to improve international collaboration over privacy issues. Just as international human rights groups have established themselves on the world scene, so too can a privacy oriented organisation work toward a higher level of awareness and respect of the issues involved. It is doubly important to develop the organisation now as Eastern Europe moves toward democratic institutions and participation in international fora of many kinds. While many issues still have to be resolved before the organisation can get underway, the encouraging support it has received so forebodes well for the future. The proposal for the organisation is a timely reminder that while many tangible benefits come from new technologies, risks also exist that cannot be ignored.²²

By August of 1990, the name "Privacy International" had been formally adopted for the organisation.²³

The Justification for a World Organisation

The only fears expressed about the formation of an international effort related to the potential erosion of national sovereignty (i.e. the role of advocates working at a national level).²⁴ Most members, however, felt that benefits far outweighed any possible impositions.

Although general agreement had been reached on the general aims of Privacy International, considerable debate was undertaken with regard to the scope and nature of the organisation. One academic from the Middle East observed:

I share the feeling that invasions of privacy through computers and surveillance will become more important in the future, and that an international organisation may have some relative advantage in dealing with these problems than national civil rights groups, committed as they may be.²⁵

so being journalists, Commissioners, information technology experts and FOI experts.

22 July-August, 1990, *Computer Law and Security Report*.

23 The name was devised by U.K. management consultant Dr Bill Reddin, who was a member of the Working Group.

24 This concern arose because a number of human rights members felt that Privacy International should develop a Congress to form policy at an international level. While this model is still popular amongst members of PI, the idea of it being a policy mechanism, as such, appears to be losing appeal.

25 This and all other letters cited in this article were published in the 1991 Interim Report of Privacy International.

A Middle East national Human Rights body saluted the initiative, and confirmed the view that the formation of a privacy network would fill a void in the international scene :

We are happy to hear of the formation of Privacy International. We believe that such an organisation will fill a certain gap in the structure of the international human rights movement. Giving more attention than customary to civil rights we salute your initiative in this regard and we appreciate your vigorous pursuit of a truly international scope for Privacy International.

A Hungarian expert agreed that an international organisation would be valuable in supporting the struggle for recognition in law of privacy and data protection issues :

It may well be that in this period - while data protection and FOI is included in the Hungarian Constitution, but having no statutory guarantees - Privacy International playing the role planned can help us to argue the subject matter by serving the type of information it includes, not speaking about the potential weight of an international community of privacy experts and advocates and experts.

Although all members agreed that the organisation should have a primary role in international communication and support, there was some small difference of opinion concerning its proposed advocacy role. The first draft of the Working Group guidelines proposed that Privacy International would have an extremely broad mandate, becoming involved in the full spectrum of privacy issues. This prompted one veteran privacy expert from the United States to warn :

My main concern, on reviewing the plans you set forth in your letter, has to do with the breadth of the activities that you are thinking of undertaking. My own preference would be for a relatively focused, strictly independent group of people with ideas of their own and no public policies to defend, who would undertake a limited but hard hitting agenda...I think a group with strong analytical independent ideas could make a significant impact by taking a few conspicuous, well considered public issues each year.

These concerns were expressed by a number of European and North American members of the Working Group. The main fear was that the organisation would be "too heavy to take off". Nevertheless, the call for a broad range of organisational interests was substantial. A prominent German informatics academic wrote in the following terms :

I agree that the exchange of proposals and state of the art information should play a major role. Additionally, there should be broader understanding of the differing national backgrounds for the access of public files, information policy and data privacy protection in private business. Since national organisations exist in many countries which are registered as public lobbyists or experts for public hearings, Privacy International should emphasise the international aspects (transborder data flow, international data security aspects, ISO standards, data flow in multinational organisations). There may be interest in area oriented sub-groups (research, medical field, employees data, funds transfer data, secret services).

Early Management and Accountability

In its formative months, Privacy International had no management structure and no direct process of authority or accountability. An early document of PI summarises this in the words :

Privacy International has survived an unusual and somewhat chaotic genesis. Rather than emerging from a structured process, as have a great many successful world-wide organisations, it has come about through a sort of spontaneous combustion. Members in several countries have worked in an informal manner to achieve resolution of the major issues.²⁶

The author, in the role of convener of the organisation, had implied authority to establish an interim structure and rules. The first set of rules, "Working Group Guidelines",²⁷ was issued to members in draft form in May 1990 and formalised the role of the convener as the principle interim office holder. The convener had the responsibility of appointing a Working Group to develop structure and policy, and, from within this group, a management (coordinating) Committee to manage Privacy International.

The Working Group, which formed the constituent base of the organisation, were selected from a broad range of criteria. Members of the group should, according to the Working Group Guidelines, have a "credible international profile in privacy, data protection, or a field related to the interests of Privacy International." This was replaced at the organisation's inaugural meeting with the words "...recognised commitment and accomplishment..."

By mid 1991, the countries represented on the Working Group were : Australia, Canada, The United States, The United Kingdom, New Zealand, Panama, Zambia, South Africa, Haiti, The Philippines, France, Germany, Thailand, Japan, Argentina, Costa Rica, India, Zimbabwe, Yugoslavia, Belgium, The Netherlands, Hungary, Poland, Egypt, Israel, Austria, Denmark, Norway, Kenya, Sweden, Hong Kong, and Chile.

The Management Committee was nominated in an ad-hoc fashion between late 1990 and mid 1991. It ultimately comprised nine members from Australia, the Netherlands, the Philippines, Panama, Hungary, Canada, the United Kingdom and the United States. The group was selected on the basis of informal consensus amongst the Working Group.

26 Interim Report of Privacy International, p 4.

27 The seven page guidelines were formed in an ad hoc manner, and evolved from informal dialogue between members. The guidelines set out the functions and objects of Privacy International, the international instruments that would be supported by Privacy International, and specified the role of the convener, coordinating committee, working group, and set out the democratic and decision-making process in the organisation. Five versions of the draft were circulated prior to formal adoption at the inaugural meeting of Privacy International in Washington DC in 1992.

A meeting of key members of Privacy International took place during the 1991 "Privacy Laws and Business" conference in Cambridge, England. The management committee was formally endorsed, and office bearers (chair, deputy chairs (2), secretary and director) were appointed.²⁸ The role of convener was, from this point, abandoned and replaced with the title of director. At the inaugural meeting the titles of director and secretary became "director general" and "secretary general".

Development of Privacy International's Scope and Mandate

Part of the concern of some members in the establishment of organisational definitions was the notion that the organisation should consider privacy in its broadest sense. That is, not merely data protection, but also the range of issues concerning surveillance and the relationship between the citizen and organisations. In other words, a fusion with civil liberties. Whilst some members expressed caution at such an early stage of Privacy International's development, others made quite clear their belief that the fusion would be certain to come about.

Several European members suggested that the existence of a network that could obtain expertise at short notice, test ideas, and rally international support on specific issues would be an invaluable contribution to privacy protection. It was suggested that in the first stage, working groups might be organised around subject areas which could then provide input to national legislative discussions and international organisations dealing with such subjects (eg telecommunications privacy).

An independent privacy advocate based in Washington DC supported the broader view of privacy when he submitted :

I think that a question that should be explored is the ground we cover when we talk about "privacy". To my mind it is much more than the ability of a single individual to prevent others from obtaining information about him. Privacy concerns power, relative power, the power of large public and private organisations over the individual.

A very clear decision had to be made from the outset about the countries that would be involved in the organisation i.e. whether developing countries would be involved. This decision was dependent, largely, on the outcome of discussions relating to the scope of Privacy International. One Canadian privacy advocate was eloquent in his argument for unrestricted membership. He wrote :

28 Jan Holvast, Stichting Wakzaamheid Persoonsregistratie, Amsterdam (Chairman), Professor David Flaherty, University of Western Ontario (Deputy Chair), Cecilia Jimenez, Philippine Alliance of Human Rights Advocates (Deputy Chair), Simon Davies, University of New South Wales (Director), Marc Rotenberg, Computer Professionals for Social Responsibility, Washington DC (secretary. Steering Committee Members appointed were Professor Dr Jon Bing (Norway), Madeleine Colvin (UK), Graham Greenleaf (Australia), Pierrot Peladeau (Canada), and Professor David McQuoid-Mason (South Africa).

The organisation must be involved with countries which do not formally embrace privacy concerns. We cannot efficiently protect privacy interests in OECD countries without a clear vision of what is happening throughout the world, the north with responsibilities toward the south, the west toward the east. The organisation must also be involved with countries that blatantly violate privacy rights and interests. We must support those countries' civil rights organisations and advocates working on privacy issues by including them in our information links and collaboration networking, but also by giving them the expertise and international pressure they ask for. For this, a fully independent, non-governmental organisation is needed.

The fledgling organisation engaged "Human Rights Internet" then based at Harvard Law School to identify organisations in developing countries that might have an interest in the privacy and data protection area. A substantial list was compiled, and a selection of these were approached. About sixty per cent of human rights organisations in developing countries responded favourably. The General Coordinator of a Central American Peak Human Rights organisation sent the following response:

In general, the privacy issue is one that we in Central America, deal with on a constant basis. Most of the organisations in the "popular sector" throughout Central America are watched and threatened by para-military and military forces. It is often the case that this surveillance and harassment, obviously an infringement of numerous rights that fall under the notion of privacy rights, is followed by illegal captures, lengthy illegal detentions with torture, and disappearance.

Others, such as this South East Asian Civil Liberties body replied in more general terms :

We are also interested in the field of privacy and surveillance and also recognise the growth of importance of this field of human rights protection. Therefore we heartfully accept your invitation.

Favourable responses were received from Zambia, Argentina, Costa Rica, Chile, Thailand, The Philippines, Egypt, India and Haiti. Many expressed concern over the use by governments, security forces and private companies of information technology and modern surveillance equipment. While the concept of privacy was somewhat remote for some developing nations, the threat of surveillance and its implications were very real.

Membership of Government Officials

Unlike the matter of membership of non OECD countries, the question of membership of government officials was not so clearly resolved. One prominent jurist proposed :

I would favour government officials becoming full or associated members of the network. They should certainly not be excluded. Some government officials have a great deal to contribute to the issues that will come up for discussion. They should be appointed on their own merits as individuals of the highest personal integrity.

In the view of many members, the correct course of action was clearly to avoid discriminating against government officials. However, because of the advocacy role of Privacy International it seemed that this prospect had its practical limitations. In response to an invitation to membership of the Working Group, one European Data Protection Commissioner wrote :

I have given careful thought to your invitation but feel that it would not be appropriate to accept it in the light of the position I hold. I do feel it would be too difficult to separate [the Commissioner from the individual] and simply appear in a personal capacity.

A policy advisor to another commissioner also flagged problems when he wrote in February 1991 :

While we certainly would not want to dissuade the members of Privacy International from taking adversarial positions vis a vis governmental organisations, such a possibility places such offices as ours in a precarious position. I am sure you appreciate our predicament.

Another Commissioner accepted an invitation to join the group, but warned :

I should also make clear that I do not want my agreement to serve now in an advisory role to pre-empt the key question as to whether membership in the network should be opened to government officials. This is a basic question which should be decided later. My own instinct, indeed, is that government people, for both their own reasons and the network's, should remain at arms length. But I remain very much open to argument on that matter.

On the other hand, a Canadian academic felt strongly that government officials should be approached because they would make a valuable contribution to an international movement :

I think that in order to be functional, this organisation as a pressure group should invite to its membership advocates of privacy and liberties, who do not belong to government or private sector administrations or pressure groups. As to the privacy commissioners, they are in a position of watchdogs of government, and in certain cases private, actions. I suppose that this new organisation should invite them to participate, having in mind that the positions that will be adopted and the actions undertaken may be critical of the governments as well as the private firms : if they feel comfortable and mandate to work in such direction, their contribution could be most valuable.

By mid 1991, it appeared that the majority of members believed that government officials should be permitted to join the Working Group of PI but excluded from the executive or office bearer positions. Their number on the Working Group would be limited to ten per cent of the total number of members. There should be no restriction on the ordinary membership of government officials.

The First Public Document

By the middle of 1991, Privacy International had secured members from 40 countries.²⁹ These included privacy advocates, data protection experts, civil liberties activists, jurists, freedom of information campaigners, academics and human rights workers.

At about that time, Privacy International was sponsored into the Law Faculty of the University Of New South Wales by the Universities Human Rights Centre. From that location, a lengthy publication "the 1991 Interim Report to members" was constructed. The publication commenced with a mandate for Privacy International :

Privacy International has been established to protect the peace, dignity³⁰ and individual rights of people throughout the world. It seeks to raise awareness of violations of privacy rights, and to establish limits to the unreasonable surveillance of individuals. Privacy International is an independent, non-profit and non-partisan organisations that supports the principles of the Universal Declaration of Human Rights and the privacy principles of the Council of Europe and the OECD.

A series of draft guidelines for the organisation had been in circulation since May 1990. The fifth version of the Working Group Guidelines appeared in the Interim Report. The objects set out in the guidelines were :

- (i) Monitoring the nature, effectiveness and extent of measures to protect privacy and personal data;
- (ii) Assessing the impact of new technologies on the privacy and freedom of the individual;
- (iii) Monitoring and reporting on Surveillance activities;
- (iv) investigating Privacy invasion by governments and government agencies;
- (v) Monitoring the use of universal identification systems and mass matching of computer files;
- (vi) Assessing the nature, extent and implications of trans border flows of information between countries;
- (vii) To facilitate the flow of information about privacy related matters inside and outside Privacy International;

29 Membership was still not a formal process. It was determined on receipt of a letter or telephone call, and was rarely formalised through filling in a form or forwarding an amount of money.

30 The terms "peace" and "dignity" are controversial. They were intended to reflect a concern for protection of the most basic privacy values, rather than those of data protection.

- (viii) To improve the level of mutual support and liaison amongst privacy advocates;
- (ix) To act as an international clearinghouse for privacy related research and issues;
- (x) To Provide a comprehensive linkage between privacy, data protection, and civil liberties advocates;
- (xii) To Publish an international annual report containing description of privacy violations throughout the World;
- (xiii) To seek ways through which information technology can be used in the attainment of the protection of privacy.

In its introduction, the Interim Report argued :

Virtually all privacy advocates agree that juridical approaches to privacy problems are unlikely to provide the sole solution, but it is equally true that an adversarial approach is only part of the answer. In the ideal world, advocates, activists and technocrats should be able to communicate, even if they never speak the same language. The international community should surely seek some degree of common ground before privacy violations become intractable.privacy should not be regarded merely as data protection. Data protection appears to be quite clearly a sub-set of privacy, and for the sake of maintaining clarity of the issues it should remain so. If all privacy matters were interpreted as data protection, solutions would generally be juridical and legal rather than being subjected to the broader range of influences.

The report went on to stress that the second principle in the development of Privacy International is the establishment of a clear nexus between civil liberties (the traditional face of privacy) and data protection (the modern face of privacy). Many members in countries ruled by totalitarian and military regimes, the report argued, know that invasions of privacy often intersect with violations of other fundamental rights and freedoms. "The link between the traditional and modern hemispheres of privacy is vital to ensure that privacy protection remains a vital and proactive issue for the people, and not simply the domain of technocrats. If privacy is indeed a reflection of the power relationships in society, then the pursuit of its protection must surely be groundbreaking and energetic".

Continuing the theme of power relationships, the organisation's chairman, Dutch privacy expert Dr Jan Holvast, declared :

More important than the technology is the changing political power structure which is one of the consequences of its use. This consequence can lead to repression of those people who oppose the existing power, or who are in a situation where condemnation occurs as a result of prejudice. This view makes clear my belief that the privacy problem is, primarily, a political problem, although in most countries with a data protection law, the emphasis is on jurisdictional measures. This juridical approach is diverting people from the real problem and the real solutions.

Description of the Organisation's Functions

Function 1: Monitoring the nature, effectiveness and extent of measures to protect privacy and personal data

Over the coming years, Privacy International will establish a grid of national groups and specific interest sub-groups to help determine whether legislative and other measures are achieving the necessary degree of privacy protection. The organisation's primary function is to assist individual countries to develop strong privacy protection. Through its annual report³¹ and newsletter, Privacy International can raise awareness of the need for protections, and through its network of experts, the organisation can follow up with practical assistance.

Function 2: Assessing the impact of new technologies on the privacy and freedom of the individual

The comprehensive assessment of technology and its impact will be conducted on a sectoral basis. A scan of the Working Group of the organisation reveals that well over fifty per cent of members have specialist expertise that should be networked internationally.

A number of sub groups are planned to be established within PI. These are likely to include data matching, freedom of information and medical issues. The first such group, telecommunications privacy, was formed at a meeting of Privacy International in Cambridge England in 1992.

Function 3: Monitoring and reporting on surveillance activities

This is possibly the most sensitive area of involvement for Privacy International, and great care must be exercised to ensure the protection of members who report on the activities of security and intelligence agencies. Whilst there are certain international trends (the trade in surveillance technology, international law enforcement records, regional collaboration etc) the majority of violations are likely to be noted at the national level. Members in some countries may wish to conduct the publication of reports through an international sub-group in the security service and intelligence field.

Function 4: Monitoring the use of universal identification systems and mass matching of computer files

Both these areas will be covered by sub-groups. Universal Identification schemes will also cover the development of population databases, population numbering systems, and multiple purpose numbering systems.

31 The first annual report is scheduled to be produced in 1993.

Function 5: Assessing the nature, extent and implications of trans border flows of information between countries

It is quite possible that the transborder data sub-group of Privacy International will be an amalgam of several relevant groups including finance and banking, telecommunications privacy, data matching, and data security.

Function 6: Functioning as an international clearinghouse for privacy related information, research and issues

This function is currently without definition. The various sub-groups and networks will informally serve a clearinghouse function. Depending on the availability of resources and funding, it is likely that Privacy International will publish abbreviated references to events, material, research, legislation etc in its quarterly newsletter.

Function 7: Engaging in advocacy at an international level, including making representations to international bodies such as the United Nations, the Council of Europe and the OECD

The advocacy role of any international group is a sensitive process. While working toward the development of internationally recognised standards of privacy protection, Privacy International must also recognise the right of individual nations to decide the appropriate form of protection. Thus the advocacy role of Privacy International as it directly affects a nation would be limited to an extent determined by members in the country concerned. It is, however, assumed that all members of Privacy International in all countries broadly support the principles laid down in the OECD and Council of Europe guidelines. Advocacy at a national or international level for adoption of these principles will be a universally accepted role of the organisation.

Function 8: Monitoring the nature and extent of privacy violations country by country, both in the public and private sector

Privacy International will establish a monitoring procedure similar to that of Amnesty International or the International Commission of Jurists.³² Assessment of privacy invasions within a country will be subject to the following conditions:

- (1) Reports will be prepared by members of Privacy International who are resident in the relevant country, and material will be refereed as extensively as possible by other local members;
- (2) The report in draft form will be passed for comment to other members outside the subject country;

³² One important difference between the two organisations is that Amnesty International's rules preclude it from allowing citizens to report on activities in their own country. It was felt that in the majority of cases, Privacy International would not be dealing with issues of such sensitivity, though this situation does arise from time to time.

- (3) The subject country is free to request whatever international support is needed in the preparation of reports;
- (4) Privacy International cannot veto or edit reports prepared according to the above procedures.

Function 9: Publishing an international annual report containing description of privacy violations throughout the world

An annual report will be published containing reports on individual countries, as well as sector reports by the various sub-groups. Ultimately, the report would cover the majority of the world's countries, and would provide an important benchmark in the development of an international context for privacy protection.

Function 10: Seeking ways through which information technology can be used in the protection of privacy

This is an important function for Privacy International. A vast amount of research is undertaken each year to develop the intrusive capacity of technology, but relatively little focus is given to the privacy protective potential for technology. This function will also help to deflect criticism that the group is "anti-technology".

Implementing the Mandate

The first practical work in international privacy protection was undertaken in Thailand, where the government had established a central population registration and ID card system. The system would link many departments and ministries, and would have few legal safeguards. I travelled to Thailand in January 1991 at the suggestion of a number of Thai community and civil liberties workers, and undertook a seven week investigation programme.

A great deal was achieved in those few weeks. A significant education process was commenced, culminating in a two page investigative article being published by the Bangkok Post.³³ The article was crucial for two reasons. First, it provided a comprehensive analysis of the governments plans, discussing possible dangers to the political balance and the rights of the individual. The article also explored areas of law and regulation which needed implementation or strengthening to avoid abuse of the government plan. Second, the article devoted considerable attention to the Australian Government's 1987 ID card proposal, and the subsequent campaign waged against it. This international comparison demonstrated one of Privacy International's most important functions : that of a conduit for understanding how issues affect other countries. Following publication of this article, I addressed the peak Thai human rights forum, the Coordinating Committee on Human Rights, which resulted in a decision to make the ID card system a formal part of the Thai human rights agenda. The Privacy International

33 Sinfah Tunsarawuth, "The fear of Big Brother", *Bangkok Post*, 17 February 1991, p 1, 8-9.

campaign in Thailand resulted in an investigation by Time magazine into the establishment of the Thai system and the involvement in it of American computer companies.³⁴

The second campaign was conducted in Manila during April and May of 1991, concerning yet another ID card proposal. The invitation to Privacy International came from the Philippine Alliance of Human Rights advocates (PAHRA), the peak human rights NGO in the Philippines. Several bills were pending in the Congress and the Senate mandating the establishment of a national identity card and numbering system. PAHRA felt that this proposal could infringe the rights of Filipinos, and create problems for the Philippines fragile democratic process.

Unlike the Thai campaign, which did not succeed in raising general awareness until many weeks after commencement, the Philippines campaign was well organised and strongly supported. A comprehensive three day programme of briefing sessions was organised for me, involving key Filipino experts and organisations in the field of economics, constitutional rights, the legal system, human rights, government affairs and the political system. Leading lawyers and academics, along with some department heads of government, were consulted as part of this process.

Four things were accomplished within the Privacy International campaign. First, a comprehensive submission was made to the Presidential Committee for Human Rights, an important government advisory body involving several departments and agencies. Second, a comprehensive submission was made to the Senate of the Philippines, pointing out the likely costs, both in economic and civil rights terms, of the proposal. Third, the issue was covered well by local media.³⁵ Finally, following a briefing of key human rights organisations, the issue was formally taken up as a part of the human rights agenda in the Philippines, and a committee was established to coordinate efforts in this area.

The third campaign involved the establishment by the New Zealand Government of a data matching and government benefits card system known generically as the "Kiwi Card". An invitation was issued to Privacy International by the Auckland Council for Civil Liberties in late August, and I travelled to Auckland in early September. The Council was concerned about the government's plan for a number of reasons. First, the plan to data match amongst government agencies lacked adequate legal protection. Second, the Kiwi Card plan raised issues of discrimination. A more general concern that developed throughout the subsequent campaign was whether the New Zealand legal and political system embraced enough protections and rights to ensure that the system would not be abused.

Like the Philippines campaign, the New Zealand agenda was well organised and highly effective. I undertook more than forty interviews with New Zealand Media including virtually all major newspapers, radio and

34 *Time*, June 24 1991.

35 The key newspaper article published during the campaign was "Keeping away Big Brother", *Manila Chronicle*, May 25, 1991.

television programmes.³⁶ A live television debate between the Justice Minister, Doug Graham, and myself succeeded in bringing the Kiwi Card issue to the top of the public agenda for nearly two weeks.

On September 12, around three hundred people met in Auckland to protest at the introduction of the government initiatives. The international perspective was once again crucial in providing a perspective for viewing these issues, and the participants of the meeting were given details of similar initiatives in Australia, North America, Asia and Europe. An organisation - the New Zealand Privacy Foundation - was formed, based on the structure and rules of the Australian Privacy Foundation. The role of Privacy International in the formation of national bodies has become a feature of the organisation's involvement in issues around the world.³⁷

In addition to these campaigns, a number of investigatory and public awareness visits have been undertaken. These include Canada,³⁸ The United States,³⁹ Hungary, and Northern Ireland.⁴⁰ These visits were undertaken by invitation from local privacy and human rights groups, and involved an extensive range of meetings and briefings with a wide spectrum of organisations. Some, such as the visit to Canada, involved extensive media coverage,⁴¹ as well as more than twenty meetings in Montreal, Quebec City and Ottawa with government agencies, privacy bodies, academics and human rights advocates.

Formal Establishment of Privacy International

After two years of planning and organisational development, PI was formally established on 17 March 1992 at a meeting of members in Washington DC. 35 members from six countries met at the Carnegie Center to establish a formal structure and to ratify the management committee and office holders. In an important gesture, the Stern Foundation in Washington DC funded the event with a grant of US\$5,000.

36 See : "Aussie privacy campaigner plans to sink Kiwi Card", *Sunday Star*,* September 1991; "The Search and Seizure society" *New Zealand Herald*, 11 September, 1991; "PM dodges debate - card campaigner" *Sunday Times*, 15 September 1991; "Shipley attacks card opponents" *NZ Herald*, 13 September 1991; "Irate PM denies ID card claim" *NZ Herald*, 12 September 1991; Smart card scheme 'under way four years' ", *NZ Herald*, 14 September 1991; "Call to outlaw ID cards" *The Dominion*, 16 September 1991; "Government rules out smart card" *The Evening Post*, 16 September 1991; "Bolger battles controversy over Kiwi Card" *Sydney Morning Herald*, 14 September 1991.

37 The author has been involved closely in the formation of national privacy organisations in Canada, the United States and the United Kingdom.

38 At the invitation of Pierrot Peladeau of Ligue des droits et liberties.

39 At the invitation of the United States Privacy Council.

40 At the invitation of the Britain and Northern Ireland Human Rights Project.

41 See "Le Devoir" Montreal, l'entrevue du lundi, "Simon Davies : A la défense de la vie privée contre Big Brother".

The meeting passed a number of motions formally establishing Privacy International,⁴² and unanimously endorsed a document which incorporated a set of rules to govern the formal structure of the initiative. This document, the Working Group guidelines, was originally contained in the 1990-1991 Interim Report to members, and has been through several drafts.

The meeting established a coordinating committee of twelve people to oversee the planning functions of the 120 person Working Group responsible for the organisation's development.⁴³ These members are drawn from 34 countries. The coordinating committee comprises experts from The Netherlands, the United States, Canada, Australia, the United Kingdom, South Africa, Norway, Hungary and the Philippines.

The group also passed a number of resolutions concerning privacy issues. These included the expression of concern about surveillance activities of the Australian Government (the establishment of the Law Enforcement Access Network), and the downgrading of the Office of the Canadian Privacy Commissioner (because of Government plans to merge his office with that of the Access Commissioner).

These two resolutions exemplified the important role that an international organisation has in monitoring the specific issues arising in member countries.

The meeting was particularly concerned about the establishment in Thailand and the Philippines of dangerous information technology systems, and passed a resolution calling on the governments of these countries to take measures to protect the privacy of their citizens. The establishment by the Thai Government of a national identity card system had been the focus of Privacy International's attention during 1991. The resolution also urged the world computer industry to establish a code of ethics relating to the transfer of information technology to developing nations.

42 The eight motions that established Privacy International were : (1) That the people present at this meeting agree here to form an organisation for the protection of privacy; (2) That the organisation be known as Privacy International; (3) That the organisation will have the functions and objects set out in the 1991 Interim Report to members, as amended (pp 23-24) as amended by agreement of this meeting; (4) That the organisation supports the international instruments set out in the 1991 report (p.23 at 1.3); (5) That the work and structure of PI be guided by the coordinating Committee nominated at the Cambridge meeting in July 1991 (pp 31,32 of the interim report), (6) That the Working Group be governed by the Working Group guidelines set out in the interim report, as amended (pp 23-27); (7) That the development of the organisation's function and structure be determined by the existing Working Group; (8) That Privacy International have one annual meeting, with provision for various special meetings to be determined by the Working Group.

43 The meeting ratified the nominations for office bearers and steering committee passed by the 1991 Cambridge meeting.

The meeting also passed resolutions concerning the Spanish Data Protection Bill (which the meeting felt needed substantial amendment), the need for a Data Protection Board in the United States, and an expression of concern over privacy violation of poor people, who appear to be particularly vulnerable to privacy invasion - often because they do not have the resources to purchase the necessary protections. A motion of support was also passed for the European Commission's draft data protection directive.

Considerable time was devoted to the issue of telecommunications privacy, resulting in agreement that Caller ID involves substantial and extensive privacy risks, and is, for the telecommunications carriers, a means to an end of having customers become accustomed to their data being transmitted as a routine part of telephone use.

Six months later, the second general meeting was held to coincide with the 14th conference of data protection and privacy commissioners held in Sydney Australia. Participants from ten countries attended the meeting.⁴⁴

A decision was made at this meeting to link the general meetings of Privacy International to existing international conferences, thus maximising participation.⁴⁵

In October 1992, at the time of the second General Meeting in Sydney, Privacy International launched the first edition of its newsletter, "The International Privacy Bulletin". This edition contained national reports from New Zealand, Spain, the Philippines and Hungary, as well as reports on activities of the organisation, internal matters (such as a proposed resolution procedure) and news of privacy issues from several countries. In his message of welcome in the newsletter, Justice Michael Kirby⁴⁶ said :

The formation of Privacy International fills a void in the international NGO structure. It is a gap which, I feel, needed to be filled a decade or more ago. Perhaps the complex technical and legal nature of the privacy issue made such a challenge difficult for human rights advocates. This is a great pity, because a vast amount of work needs to be done in all parts of the world to raise awareness of privacy issues and to generate the support for the development of effective protections....To make an impact in the privacy arena, Privacy International will need to continue its work in identifying surveillance, while also working on the development of its administration system and its member networks. This two pronged

44 The meeting was held on 30 October 1992 in the School of Law of the University of New South Wales, which has housed Privacy International since late 1991.

45 A General Meeting of Privacy International will be held to coincide with the international conference of Data protection and Privacy Commissioners, and the Computers, Freedom and Privacy conference held each year in the United States. An open forum of PI will be held at the annual Privacy Laws and Business conference in England.

46 President of the New South Wales Court of Appeal; chairman of the OECD expert group on transborder data barriers and the protection of privacy (1978-80) and member of PIs Working Group.

approach will ensure that PI develops into an influential and useful body with a high profile.

The newsletter will, in the long term, be one of Privacy International's most important developments : creating a conduit for international discussion of a range of privacy related issues. Such an organ currently does not exist.⁴⁷ Privacy advocates have traditionally exchanged their ideas by way of academic journals, a process which involves a considerable lead time.

At the time of writing, the financial situation of the organisation was static. Membership fees were not enforced, and with the exception of the Stern Foundation grant, no formal institutional support had been received.

The Future of Privacy International

There are, however, signs that the financial situation of the organisation will improve. These include expressions of support from two US philanthropic foundations, the development of the newsletter, and the establishment of a broad membership base. An expression of support from the Council of Europe,⁴⁸ together with a growing number of informal links with conferences, academic institutions and government bodies will also assist the process of developing a solid base of resources. A total of five projects and campaigns, including a Northern Ireland Surveillance study and a project on Stasi file legislation are being planned, and these will doubtless improve the profile of Privacy International.

In addition to these encouraging developments, Privacy International has organised the first of what it hopes will be an ongoing annual privacy conference. "Privacy regulation : International developments, Australian implications" was held at the School of Law at the University of New South Wales on the week of the 14th Data Protection and Privacy Commissioners Conference in Sydney.⁴⁹ The conference was attended by seventy participants from government and industry, and boasted an unprecedented spectrum of local and international speakers. Another conference has been scheduled for the 15th Commissioners conference to be held in Manchester England in 1993.

47 There are currently four publications dealing with privacy : *Privacy Times*, *The Privacy Journal*, *Transnational Data Report*, and *Privacy Laws and Business*. These offer a comprehensive overview of privacy issues, but fail to provide a facility for an exchange of ideas amongst advocates and experts.

48 Letter from Secretariat General, Council of Europe to S.Davies, 11 June 1992.

49 Privacy regulation : International Developments, Australian implication, 30 October 1992, organised by Continuing Legal Education, Faculty of Law, University of NSW. The programme Committee consisted of Graham Greenleaf (Law School, UNSW) and Simon Davies (Law School, UNSW).