

"The Role of Members of the Commission"

International Commission of Jurists

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INTERNATIONAL COMMISSION OF JURISTS

THE ROLE OF MEMBERS OF THE COMMISSION

Origins of this paper:

1. This paper is prepared in compliance with resolutions of the Executive Committee of the International Commission of Jurists (ICJ). Those resolutions arose out of a suggestion of Justice Dorab Patel (Pakistan). It was agreed that a statement of the role and functions of Members of the Commission (Commissioners) would be prepared by the Chairman. The document was to comprise a *Charter* for the Commissioners. Although this grandiloquent title has been avoided, the importance of the role of Commissioner in the ICJ cannot be overstated. Its origin is to be found in the structure of the ICJ, contained in its *Statute*.

Provisions of the statute

2. By Art 7 of the *Statute*, the Commission:

"... consists of jurists who are dedicated to its aims and objectives and who in their persons provide wide geographic representation of the legal profession. The Commission includes 25 members, which number may be increased to a maximum of 45."

3. From Art 7, it will be seen that the jurists who are the Members of the Commission comprise the persons who constitute the Commission. By this

definition, it is expected that the Members will be of high standing within the legal profession. By the restriction on numbers globally, it is made clear that only jurists of the highest reputation and significance for the work of the Commission will be elected. In addition to the Members, Art 10 provides for Honorary Members who are described as "distinguished jurists". Although not restricted to former Members, Honorary Members are normally chosen from former Members by decision of the Executive Committee. They are entitled to attend meetings of the Commission, but without a vote. As a further indication of the integrity of the Members, Art 10A provides for their membership to be held in abeyance whilst they hold an official position which could conflict with membership of the Commission. The President of Ireland (Mrs Mary Robinson), the Secretary-General of the United Nations (Dr Boutros Boutros-Ghali) and the Attorney-General for Kenya (the Hon Amos Wako) are presently affected by this Article.

4. Other persons and organisations may become "associated" with the Commission, including through national organisations (Sections) and Affiliated Bodies (see Arts 11, 12). But the "directive authority" of the ICJ is vested in the Commission which is obliged to meet at least once every three years or whenever called into session. The Executive Committee which "defines the general policy of the Commission and its programme of activities and is responsible for the administrative supervision of the Secretariat" between meetings of the Full Commission is elected from the Members, ie by the Commissioners of the ICJ.
5. Whenever the Commission is not in session, the Executive Committee has full power and authority to act in its place (Art 21). New Members of the Commission are proposed by the Executive Committee which can, under Art 22, "direct a poll of the members to be taken by correspondence". The Secretary-General, the Chief Executive of the Commission, is appointed by the Executive Committee (Art 28). In this way, he is appointed by the

Members of the Commission. He is authorised under Art 35 to sign legal instruments on behalf of the Commission.

6. The foregoing provisions of the *Statute*, as well as the conventions of the past organisation of the ICJ, demonstrate the crucial role played in its definition and activities by the Commissioners. In a real sense, the ICJ comprises the Commissioners. It takes strength from their integrity and national and international reputations. The persons elected in the past, and likely to be elected in the future, to the position of Commissioner of the ICJ are the kinds of distinguished jurists who will uphold, and in a sense personify, the tripartite mission of the ICJ: defence of the rule of law; advancement of human rights; and safeguarding the independence of the judiciary and of lawyers everywhere. Any consideration of the role of Commissioners of the ICJ must start from a thorough understanding of the structure and mission of the ICJ, the personalities of past and present Commissioners and the conventions which have been observed in relation to their functions.

Fundamental (core) functions

7. The fundamental functions of ICJ Commissioners can, in turn, be derived from the statute of the ICJ. They include:

7.1 Commitment to ICJ objectives: There is no point in a jurist, however distinguished, accepting nomination and election to the ICJ if he or she is not committed to the foregoing mission of the ICJ and willing, to the full extent of his or her powers, to make a real contribution to the work of the ICJ;

7.2 Promotion of ICJ activities: Art 5 of the statute envisages that the aims and objectives of the ICJ will be carried out "through the publication of printed matter, ... the organisation of private lectures, public meetings and congresses, the preparation and transmission of suitable radio and television broadcasts and generally by any other type of activity

appropriate to achieve the objectives". It may therefore be expected that those who are elected Commissioners of the ICJ will, when asked to do so or otherwise when they consider it appropriate, contribute to the aims and objectives of the ICJ in such envisaged means. In some cases (eg for judicial officers in some countries) it will be more difficult than in others for public activities of the kind mentioned in Art 5 to be performed. But to the full extent of the powers of the Commissioners, they may be expected to contribute to the aims and objectives of the ICJ in print, by lectures, through the media and otherwise. Where a jurist, who is a member of the ICJ, makes general pronouncements on the rule of law, human rights or the independence of the judiciary which are consistent with the policies of the ICJ, he or she should indicate membership of the Commission and draw the existence and work of the Commission to public notice and to the notice of fellow jurists;

7.3 Meetings of Commission: Because the Commission meets, in general, once every three years (Art 13) it may be expected that, if at all possible, Commissioners will attend such meetings. Given the limitations on re-election of Members of the Commission (Art 9) it will normally be possible for a Commissioner, during his or her term, to attend no more than four meetings of the full Commission as a Member. Honorary Members are also invited to, and do, attend such meetings. The demand of attending meetings is not specially onerous. But it is important because it is at the meetings that the activities of the Commission for the future are chartered, policies are established: relationship with national Sections and Affiliated Organisations are examined and reinforced and the Executive Committee (which will direct the activities of the ICJ between meetings of the full Commission) is elected. It may therefore be expected that, except for good reason, a Commissioner will endeavour to attend meetings of the Full Commission.

7.4 National organisations: Because the statute envisages national Sections and Affiliated Organisations, and because such bodies have been established in most countries in which Commissioners have been elected, it may be expected that Commissioners will interest themselves in the work of such bodies. They should, if not already Members, join such bodies and wherever possible attend conferences or committee meetings. They should arrange for the minutes of such bodies to be transmitted to the Secretariat in Geneva. They should communicate concerns and suggestions of such bodies to the Secretariat.

7.5 Missions etc: Because the work of the ICJ is performed through country missions, thematic missions, trial observance, electoral observance, conferences, seminars, workshops etc it may be expected that a Commissioner will, where requested, endeavour to respond positively to a request of the Secretary-General to participate in such activities. In recent times, more than in the past, it has become usual to invite Commissioners to take part in, or to lead, missions of the ICJ. This may sometimes involve requests at short notice. Occasionally, Commissioners will not be able to fulfil such requests. However, in the recent past, many Commissioners have taken part in such activities. If a Commissioner is particularly willing to be involved in such a way, he or she should indicate this commitment to the Secretary-General.

7.6 Local concerns: From time to time, the Secretary-General will visit the country in which a Commissioner is resident. It may then be expected that the Commissioner will be the host during the Secretary-General's visit and will make arrangements for the Secretary-General to meet appropriate governmental, judicial and other leaders. Similar assistance may be expected in the case of visits by other ICJ staff, other Commissioners or representatives of national Sections and Affiliated Organisations. In this way the Commissioners represent a network of senior jurists who can

appropriately open doors where that is necessary and useful to the functions of the ICJ. Similarly, if reports and other publications of the ICJ are of relevance to governmental, judicial and other leaders, it may be expected that the ICJ Commissioner will be involved in distributing such publications and in otherwise promoting knowledge of the activities of the ICJ in his or her country.

7.7 EXCO service: Because the Executive Committee comprises members of the Commission, it is necessary that Commissioners should offer in sufficient number for election to the Executive Committee in accordance with Art 20. That Committee comprises a maximum of seven members. Because of the provisions for changes in the membership of the Executive Committee (some by the statute and others by convention acknowledged in a resolution of the ICJ Executive Committee dated 9 May 1992), it is essential that there should be a number of Commissioners willing to serve in the EXCO. Because of the global character of the ICJ, this requires election of members from different regions of the world. The EXCO has also resolved that there should be an appropriate representation of differing professional backgrounds and of men. Members of the Commission who are prepared to accept the additional obligations of the Executive Committee (including, generally, two meetings in Geneva each year and additional attention to administrative and like matters) should signify their interest to the Secretary-General and to other Members of the Commission.

7.8 New members: Because the Commission comprises the Commissioners, and because the Commissioners are elected by the current members, a special responsibility falls upon members to take part in the elections for new Members of the Commission in accordance with Art 8. The sponsorship of two Members is required. But usually there is a much more vigorous involvement of Commission Members (particularly in the

EXCO) concerning the election of new Commissioners. This reflects the obligation of current Commissioners to maintain the high reputation of the ICJ which rests, in part at least, upon the international repute of the Commissioners. If Members of the Commission have views concerning distinguished jurists who should be elected to membership of the Commission from countries not presently represented, or those who should be kept in mind for future election upon a vacancy falling due, they should signify their suggestions to the Secretary-General and to other Members of the Commission. Proposals for election to the Commission are received from national Sections, Affiliated Organisations and Commissioners. But, in the end, it is the Commissioners who elect the other Members of the Commission. It may therefore be inferred that the Commissioners are required to take an active interest in the current and future membership of the Commission and the balance of interests appropriate to be represented.

Additional (non-core) activities

8. In addition to the foregoing activities, a number of functions may be played by Commissioners, depending upon their particular interests and available time:

8.1 *National Sections:* In the case of some Commissioners, they have accepted a more significant role in their national section, eg as President. Whilst the Commissioners derive their authority from election to the Commission, it has proved beneficial for Commissioners to take an active part in the existing national Sections and Affiliated Organisations. This has provided useful feedback and an impetus to the local body.

8.2 *Establishing National Sections:* Where a national Section does not exist, a Commissioner might consider it appropriate to take part in the establishment of such a section by gathering jurists with a commitment to

the objectives of the ICJ, organising a committee and initiating a Section or Affiliated Organisation or reviving one which has become dormant.

8.3 Regional activities: In some parts of the world, it has become common for regional meetings of Commissioners and others committed to the work of the ICJ to take place. Thus, the European Sections meet together annually. It would be beneficial if Commissioners were prepared to take part in such meetings. Experience suggests that a useful exchange of information and ideas normally takes place at them.

8.4 Documents and publications: Many Commissioners are actively involved in publication of matters relevant to the rule of law, human rights and judicial independence. Where appropriate, they should send notes on their activities and/or copies of their publications to the Secretary-General. The provision of short summaries suitable for notation in ICJ publications is especially appreciated.

8.5 International meetings: From time to time the ICJ takes part in international meetings such as the Second World Conference on Human Rights in Vienna in 1993. The participation of Commissioners in such meetings, and their identification of their association with the ICJ if they are participating in another function, is beneficial to the standing and influence of the ICJ. Where appropriate, Commissioners should consider identifying their membership of the ICJ in publications having relevance to ICJ themes.

8.6 Monitoring developments: The EXCO now publishes, promptly after each meeting, an *Update* reviewing the activities of the EXCO and the Secretariat. It would be appreciated if Commissioners would monitor developments and, make suggestions or comments on particular items of interest.

8.7 Future issues: The ICJ has been extremely influential in the development of human rights jurisprudence. Commissioners represent a

think tank for human rights issues. They should help guide the Commission and the future direction of human rights and international law. The network of distinguished jurists provided by the Commission affords a useful community of high level jurists who, in appropriate circumstances, can be mobilised to serve the high objectives of the ICJ. All members of the Commission are, upon their appointment, provided with a list of other Members, Honorary Members, national Sections and Affiliated Organisations. This is a unique network of influential jurists. Commissioners can make direct contact with other members of this network. They are not obliged to proceed by way of the Secretariat. But in matters of general ICJ concern they should keep the Secretariat informed.

8.8 *Informing Secretariat:* It may be expected that where ICJ Commissioners perform activities in their home country or elsewhere, they will inform the Secretariat where appropriate. If a matter is controversial, it would be wise to raise the matter with the Secretary-General who, if he thinks it appropriate, will refer the extent of any ICJ involvement, as such, to EXCO. In the past, some confusion has arisen from the activities of Sections which have not made it sufficiently plain that they represent activities of the Section, not of ICJ Geneva. Some care needs to be taken in this regard.

8.9 *Human Rights NGOs:* In addition to links with ICJ Sections and Affiliated Organisations, it is expected that Commissioners will establish contact with other human rights organisations in their countries, including Amnesty International and where applicable, Lawasia, International Alert, the Watch organisations, IBA, UIA, etc. The economical deployment of human rights activities is a goal to which ICJ Commissioners may contribute.

Conclusions: a developing role

9. It will be seen from the above that the activities of Commissioners can be as large, or as modest, as the Commissioner is inclined to make them. The core activities put demands which most Commissioners in the past have been prepared to fulfil. The Commissioners have lent their name, their authority and their reputations for integrity to the Commission. This has afforded the Commission a high standing which has been reinforced by the remarkable qualities of the successive Secretaries-General of the ICJ. Because of the high standing of Commissioners, they have a responsibility to be leaders in the legal profession and beyond and to contribute to the future directions and the rule of law, human rights and judicial independence throughout the world. Their role as ICJ Commissioners affords them an international forum for leadership in the causes of non-discrimination; equal opportunity and constitutionalism. The pool of talent within the ICJ Commission is outstanding.
10. It is therefore unsurprising that many of the Commissioners have, following their election to the ICJ, been elected, or appointed, to significant posts in their own countries, in international institutions or other international posts. Thus, two of the present Judges of the International Court of Justice (including the President) are ICJ Commissioners, as is the Secretary-General of the United Nations. Several of the Commissioners are Special Rapporteurs or Special Representatives of the Secretary-General on human rights issues. Other Commissioners have been members of the International Law Commission, the United Nations Human Rights Committee and other organs of the international community. Many more have fulfilled challenging obligations in new international bodies of great significance. The President of the International Criminal Tribunal for the Former Yugoslavia (Professor Cassese) is a member of the Commission (Italy). In their own countries, the Commissioners are, without exception, in the highest ranks of the judiciary

and other high public offices, the practising legal profession and the universities. The role of the ICJ Commissioner is still evolving. To adapt the phrase made memorable by the late President Kennedy at his inauguration, ICJ Commissioners should ask not what the ICJ can do to enhance their already distinguished reputations and careers. They should ask what they can do for the ICJ, given its vital mission for the future of humanity.

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