

INTERNATIONAL COMMISSION OF JURISTS

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ROLE OF COMMISSIONERS AND RELATIONS WITH THE SECRETARIAT

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A BASIC PROBLEM

1. The Triennial Meeting of the International Commission of Jurists (ICJ) affords an opportunity to the Members and Honorary Members of the Commission to meet together, exchange thoughts and contribute to the better running of the organisation in the triennium ahead. I have been asked to present a paper on the role of Commissioners within the ICJ. This cannot be attempted without consideration of the relationship between the Commissioners and the Secretariat. Under the *Statute* of the ICJ, the Commission is made up of the Members. The Members are, without exception, jurists of the highest distinction. It is important that they should have a significant role in the ICJ and not merely be cyphers, whose names are borrowed to lend credence to the activities of employed officers, however dedicated, well meaning and sympathetic to the objects of the ICJ those officers may be.

2. There is a danger that the Secretariat will be disconnected from the body which makes up the ICJ, ie the Members. This danger is of much a matter of concern to the Secretariat as to the Commissioners. Such

disconnection is incompatible with the *Statute*, inappropriate to the high standing of the jurists who make up the ICJ, unreasonable to the Secretariat officers who are entitled to look to the Members for leadership and policy direction and likely, in the long term, to endanger the ICJ because it is then so heavily dependent upon the capacity and integrity of staff members.

3. The basic problems are well known:

3.1 By definition, the Members of the Commission are all extremely busy people with only a small portion of their time available (exceptional cases apart) to devote to ICJ affairs;

3.2 Triennial Meetings come and go and the ICJ must meanwhile continue to function with its busy agenda. Even communication by fax or correspondence is no substitute for direct exchanges of opinion and inter-action. But this is not feasible, nor envisaged by the *Statute*, except on the current intermittent basis;

3.3 Even the elected Executive Committee (EXCO) meets, on average, only twice a year. The meetings are generally of one day only and some Members cannot attend. Improvements have been made to ensure the attendance of a good number of permanent Members of the Executive Committee to avoid nominees being needed to make up a *quorum*. But such brief encounters are no substitute for a more regular working contact with the ICJ Secretariat;

3.4 In the last Triennium, certain steps have been taken to improve the input and participation of Commission Members. These have included:

(a) The greater use of Commission Members for fact-finding missions of the ICJ;

- (b) Circulation of the *Update* immediately following EXCO meetings;
- (c) Consultation with the Members about particular topics.

However, this is still inadequate. The utilisation of Commission Members is insufficient. They are still largely an untapped resource of the ICJ. In the nature of the daily running of the ICJ, it must be incumbent on the Secretariat to call on the Commissioners to participate more than is done at the moment

4. Although, in the nature of things, the ICJ Secretariat must react quickly to issues which present unexpectedly, requiring immediate comment or instant response, by reference to ICJ policy and activities, there is a need always to remember that the ICJ is constituted by the Members. This is sometimes more honoured in the breach than in the observance. For example, at the meeting of the *ad hoc* committee on the International Criminal Court, the Secretariat circulated a paper which included comments and suggestions on clauses of the draft *Statute*. That *Statute* had been prepared by the International Law Commission which includes (or included) Members of the Commission of the ICJ. Several Members of the ICJ have high expertise in international law. Although the issues debated raised important policy questions, the presented paper was not the subject of Secretariat consultation with EXCO or Members of the Commission. I make no particular complaint. I am sure that the comments made were in broad terms acceptable to the Commission Members. However, this procedure is not appropriate. In a body made up of distinguished jurists, many of them with relevant and helpful expertise, the approach illustrates a certain failure to mobilise and maximise the use of the Members of the Commission. If necessary, a particular Member could be designated to collect opinions to feed them through the Secretariat into

the ICJ's comments in such a case. Otherwise, the comments are, substantially at least, those of the Secretariat and not of the ICJ itself.

5. The procedure followed in the foregoing case is probably reflective of past approaches of the ICJ Secretariat before 1995:

- 5.1 These involved relatively little consultation with the Members;
- 5.2 Little consultation with the Sections and Affiliated Organisations;
- 5.3 Highly expert and professional leadership from the Secretariat in Geneva.

In 1992, however, the Commission opted for greater transparency, increased involvement of the Members in Commission activities and the execution of an ambitious and well-targeted programme which requires a new organisation of the Secretariat and a different attitude on the part of its officers. Although important gains have been achieved, something of the old style of administration lingers. Institutional cultures are extremely difficult to change. We must bend our efforts in the next triennium to change the institutional culture of the ICJ. This will have implications both for the Members of the Commission and for the Sections and Affiliated Organisations as well as for individual jurists around the world who have sympathy to our objectives. Without turning the ICJ into a mass movement similar to Amnesty International, there is definitely a need to change its administrative culture. The process began in 1992. But much still needs to be done, and not just by talk and worthy resolutions at ICJ meetings.

SECRETARIAT ORGANISATION:

6. Another cause for the present culture may probably be traced to the environment in which, in its former premises, the ICJ staff had to operate. Whilst this was "cosy", it was rather unprofessional. It encouraged an ethos of "family" which was understandable. But it introduced elements of familial behaviour which appear inappropriate to a modern international

human rights NGO. As in a family, individuals were largely left to operate on their own, unsupervised and with relatively little accountability. The high talent of the ICJ's continuing professional staff requires high levels of individual responsibility and professional discretion. But with a staff of about twenty, in new premises with less crowding and fewer opportunities of exact day to day knowledge of what each other are doing, it is clearly important that a different management structure and system should be introduced. Necessarily, this imposes new obligations and responsibilities on the chief executive, the Secretary-General. But it also imposes obligations on the Commission and its EXCO to give clearer directions about the running of the office, the policies to be pursued, the programme content and the monitoring of individual and collective performance - including monitoring of the performance of the Members of the ICJ themselves.

7. As Chairman of EXCO, I have had many complaints from Commissioners and Sections of the ICJ concerning the failure of the secretariat to attend to correspondence. Many write to me in despair of securing response to their enquiries or requests. The incapacity of the Secretariat to respond efficiently and promptly, particularly to Commission Members is of serious concern. Something must be done in the organisation of the Secretariat to ensure that this problem is addressed. I have already made it clear that it is my expectation that enquiries by Commissioners, in particular, should be treated as a priority requiring immediate attention. The role of the Commission under the *Statute* has to be drawn to the notice of all staff so that they understand, putting it quite bluntly, that the staff exists for the Commission and the cause it supports, not *vice versa*.

8. The failure of the Commission and of EXCO has been to provide appropriate backup to the Secretary-General. He has the typical problems

of an executive leader. He must perform the ceremonial and leadership, ambassadorial and presentational functions. But he must also be the chief executive and efficiently run the administration. Something has to give. In the past, it has sometimes been the latter. It is essential that the internal organisation of the Secretariat be enhanced to relieve the Secretary-General of day to day management tasks; to supervise legal and administrative staff of the Secretariat; to report to EXCO and the Commission on administrative issues; and to monitor closely programme performance and budgeting, all under the general direction of the Secretary-General. This is not to derogate from the overall responsibility of the Secretary-General, as envisaged by the *Statute*. But it is to ensure that, during the Secretary-General's absences, the administrative control of the ICJ continues to be effective and essential decisions are made.

9. Some responsibility for failure of administrative direction must be accepted by the EXCO, specifically by myself as Chairman. The past is not as important as the future. The Secretary General's burden must be reduced. But this also requires of him a capacity and willingness to delegate. The appointment (with appropriate salary) of an officer with the relevant duty functions, approved by the EXCO, which ensure a better administration of the Secretariat is essential.

10. In my own professional life, I hold the position of the head of the busiest appellate court in Australia. I am frequently absent from my duties performing international activities of various kinds. Judicial work cannot be delegated. But administrative functions can be, and are. Absences are usually very brief. Prolonged absences cannot be accepted, compatibly with the primary function. Acceptances of conferences and other duties which involve absences must be made with discernment. Too many absences necessarily inhibit the capacity of an office-holder to perform his or her basic functions. It is inevitable that the Secretary-General and other

Secretariat staff will be absent from duty from the ICJ in Geneva quite often. But it seems to me that a more rigorous system is needed, under the general supervision of the EXCO, to approve staff absences and to ensure that they are truly essential to the performance of authorised and necessary functions as set by the Commission Members. This system must work under the supervision of the Secretary-General himself. But it must be accounted to EXCO and, through it, to the Commission. That is the only acceptable means of rendering the organisation accountable to its Members under its *Statute*.

IMPROVEMENTS

11. To the extent that Commission Members are under-utilised, or not used at all, there will inevitably be a loss of interest on the part of Members, a failure to take into account their expertise and diverse opinions, a lowering of the reputation of the organisation and a failure of its work to exhibit the focus, efficiency and quality that the Members have achieved in their own individual activities. The fundamental problem is to tap the skills of the Members in circumstances in which they are very rarely in Geneva and almost never available in a collective group, save for Triennial Meetings.

12. Recognising this fundamental difficulty and the problems which have arisen from it, and recognising also the commitment of the Commission and the Secretary-General to a more transparent organisation for the ICJ, I propose the following improvements:

- 12.1 The use of Commission Members in mission, trial observance and other activities of the ICJ should be increased. Where participants are required in ICJ activities, the first offer should always be the Members. They are all contactable by fax. Time limits could be set for their response. If they are not

available to help, they will say so. But they should be the first source of the ICJ's pool of talent;

12.2 Members should not only be used in fact-finding missions but also more widely used in thematic areas. They should be consulted having regard to their particular expertise. Again, time limits could be fixed. The ILC paper on the International Criminal Court is an illustration of the need to have a better network of consulting Members with relevant expertise on thematic questions;

12.3 There should be improved accountability by the Secretariat to the governing body, ie the Commission through its elected Executive Committee. This improved accountability should include:

- (a) Annual approval by the EXCO of objectives and strategies for the year ahead. This should begin in 1996. It should include international, regional, national and thematic activities. Attention should be given on proposals from the Secretariat for the involvement and use of Members of the Commission;
- (b) The Secretary General should report briefly in a monthly Bulletin on the activities of the Secretariat to all Members of the Commission. This should supplement the *Update* prepared by the Chairman of EXCO following each EXCO meeting. If necessary, such a report could be delegated to the Executive Secretary or another appropriate person within the Secretariat;
- (c) The Secretary General should provide quarterly reports to the Chairman of EXCO on the attainment of the established objectives and strategies. This should

include full financial reporting which should then be circulated to Members of EXCO, and where appropriate to the Commission, with comments of the Chairman;

- (d) If funds permit, meetings of EXCO should be increased from twice a year to three times a year; and
- (e) Individual Members of EXCO should accept the responsibility to oversee particular thematic subject matters. For example, Professor Tomuschat would have been ideal for appointment as the Commission Member in charge of the ICJ response on the International Criminal Court. His work both within the ILC and ICJ on this topic made him the appropriate choice.

12.4 The Secretariat should, under the direction of the Secretary-General, be reorganised to make it more responsive to the Commission and to the aims and objectives of the Commission, as fixed by the Commissioners. Necessarily, these would have to be defined from time to time between Triennial Meetings, by EXCO. The informal "familial" arrangements, appropriate to a villa, are not in keeping with a more modern professional administrative style. Under the direction of the Secretary-General and with the knowledge and approval of EXCO it would be appropriate to:

- (a) Confirm all job descriptions;
- (b) Reclassify some positions where necessary;
- (c) Prepare and submit to the first EXCO meeting in each calendar year a document setting out ICJ objectives and strategies for the year ahead by which the efficiency and achievements of the Secretariat could be measured by EXCO and reported to the Commission;

- (d) Within available funds, an improved system for salary appraisal should be introduced, including timely review of travel and *ex gratia* payments made to staff;
- (e) Following a general review of staff structures, it may be necessary to consider the rearrangement of the current structure and the introduction of improved efficiency and performance standards to which all modern administrative structures are now subject.

12.6 The EXCO has repeatedly approved and called for an *Annual Report*. Yet this has not been prepared within the Secretariat. The failure of the ICJ to produce an *Annual Report* is not only an instance of poor pursuit of EXCO decisions and weakness in internal organisation and priorities. It is also a failed opportunity to reach out to Members, Sections, Affiliated Organisations and interested jurists throughout the world and to tap funding sources essential to the future activities of the ICJ. I have suggested a design and format for the *Annual Report*. But it has not been delivered. Even the *Triennial Report* had to be delegated to an *ad hoc* writer. I know of no comparable body which fails to produce an *Annual Report*. Perhaps symbolically, when the *Triennial Report* was prepared, the section on the Commission Members were consigned to the closing pages. I suggested that these presentational priorities should be changed. If, to produce an *Annual Report* which becomes the basis of reflection, policy direction and accountability, it is necessary to change the assignment of some internal duties and time use within the ICJ, that should be done. It is hard to see how Commission Members can know what the ICJ is doing and hopes to do

without better reporting. An *Annual Report* is not a decorative option of an overworked body. It is an essential means of monitoring the performance of the work of the body. It should be done from within the ICJ's own resources and not delegated to specially recruited writers. This will doubtless require some reorganisation of activities within the Secretariat.

12.7 The ICJ network needs to be strengthened. The present Secretary-General has made extraordinary efforts to reach out to Sections and Affiliated Organisations. His visit to Australia and New Zealand, for example, was the first ever made by an ICJ SG. But Geneva and the Sections/Affiliated Organisations still continue to operate largely independently of each other. There needs to be a concerted effort to involve Sections and Affiliated Organisations more actively in the work of the ICJ. This is another reason for an informative *Annual Report*. Even some Sections (eg Justice UK) publish an excellent *Annual Report* which sustains participant interest and promotes funding. The perennial issue of improved relations between the Commission and the Sections/Affiliated Organisations will be discussed in Bangalore.

12.8 The ICJ's current system of seeking funding on the basis of a two year planned programme is highly desirable. It requires the organisation to plan ahead. It helps to avoid the danger of having the ICJ driven by donor priorities. Some activities of the Secretariat do not come within the planned programme. These activities are funded through the core budget or through a specific grant provided for a particular purpose by a particular source of funds. There is an urgent need for the ICJ

to look to new sources of funds both for the core budget and for future programme items. The burden of fund-raising necessarily falls most heavily on the ICJ Secretary-General. His tasks will be easier if there is good direction from the Commission, and especially the ICJ EXCO, on programmed items for the future. Recently the ICJ adopted a number of items suitable for future programme activity, including human rights and the Human Genome Project; human rights and HIV/AIDS; human rights and drug users and dependent persons; human rights and sexual orientation. Each of these items would point to appropriate potential sources of funding support. But it would be essential to have proper planning and good programme design in which the Commission members, as well as the Secretariat, participated.

CONCLUSIONS

13. The ICJ is a remarkable organisation. Its global mission is daunting. Its achievements are extraordinary. It is honoured with numerous prizes. It continues to be highly respected. Its Secretary-General is increasingly in demand and is a person of high personal standards and notable achievements. The Secretariat staff work extremely hard. The achievements of all go without saying. So I have assumed this and directed the attention of this paper to structural weaknesses.

14. This paper is addressed to those weaknesses within our organisation with which we are all familiar. Those weaknesses derive from structural problems, some of which are difficult to change. But the beginning of improvement is the definition of the problem. We all know the kinds of issues that need to be addressed.

14.1 Under-utilisation of the Commissioners;

14.2 Lack of an *Annual Report*;

- 14.3 Lack of tight administration in Geneva and want of efficient responses to many letters from Members, Sections and others;
- 14.4 The slow preparation of reports eg the Kenya Mission Report;
- 14.4 Drift in the organisation of agreed Missions (eg Tibet); and
- 14.5 Serious delays in the recruitment of approved staff (eg European Desk Officer, etc).

15. Despite these weaknesses, the achievements are enormous. The task ahead is to continue the achievements and to improve the administrative structure. Above all, in the next triennium, there should be a concerted effort to improve the involvement of Members of the Commission and to relate the work of the Secretariat in Geneva more closely with the Sections and Affiliated Organisations which give the ICJ its outreach to the four corners of the world.

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