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INTERNATIONAL ASSOCIATION OF JUDGES

THE UNIVERSAL CHARTER OF THE JUDGE .

COMMENTS BY THE HON JUSTICE MICHAEL KIRBY AC CMG

Justice of the High Court of Australia  
President of the International Commission of Jurists  
Member of the International Association of Judges

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*Art 1 Independence:* The part "partitioned" is not appropriate in the English language. Perhaps it should read "Is not divisible" or "Is non-derogable".

*Art 2 Status:* The judicial status may be laid down by constitutional law as well as by conventions and time honoured practises. Statutes can readily be changed. An entrenched constitutional statement of judicial status is of greater protection than one provided by statute.

Instead of "even from the judicial establishment" I would suggest "the judge is also independent from other judges".

*Art 3 Independent bodies:* Please note the spelling of "independent". In most English-speaking countries, the discipline of judges is ultimately reserved to the Parliament or Congress containing the representatives of the people. Judges may only

ultimately be removed for proved incapacity or misconduct by Parliamentary or like resolution. Perhaps you mean "the investigation of complaints against the judiciary shall be carried out

" I would also suggest that such bodies contain a majority of judges that are not "representative" of judges in the sense of being a trade union to protect miscreant judges. Such bodies should also include, in my view, laymen, ie non-lawyers.

**Art 4 - Submission to the law:** "Subjected to" is too strong in the English language. It should read "is subject only to the law". Should this not be qualified by an opening phrase such as "In the performance of judicial duties the judge is ....". I would also suggest there be added at the end of the article "or any other external influence". For example, churches, friends, family, clubs, etc.

**Art 6 - Impartiality:** Again, this might be opened with "in the performance of the judicial function ...".

**Art 7 - Reserve and dignity:** I would suggest "restraint" rather than "reserve". The word "dignity" conjures up notions of pomposity which the judiciary can nowadays do without. For my own part I would prefer "restraint", respect for the dignity of those with whom the judge deals, with efficiency and without undue delay".

**Art 8 - Incompatibility:** This is expressed too widely. Judges today commonly take part in conferences, national and international, which could not be described as "teaching and research in the judicial

field". Many international agencies and offices involve participation of serving judges. National and international arbitration would be regarded as incompatible with the judicial office in most, or all, English-speaking countries. Such activities are left until after the judge has retired from judicial office.

In many countries, there is no "independent body that is representative of the judiciary". Judges are also independent of any such bodies which are purely voluntary. They are also independent of Chief Justices and Chief Judges.

**Art 9 - Political neutrality:** What is the distinction being drawn between "the law" and "the Constitution"? The Constitution is part of the law. I would prefer "that is authorised by law and by applicable judicial convention".

**Art 10 - Irremovability:** The word "Inamovable" is not English. It should read "irremovable". The word "displaced" is inappropriate. It should read "stood aside" or suspended. Substitute "except as provided by law". There is the same problem with "an independent body that is representative of the judiciary".

Judges in most countries in the English-speaking world are not now appointed for life. The United States of America is an exception in respect of federal judges. It should read "for life or for an extended term as provided by the Constitution or other law".

It is not only a change in the judicial retirement age but also in salary, pension, remuneration and other benefits of office that should not be altered during judicial service.

**Art 11 - Selection and promotion:** In most English speaking countries judges are appointed by the Executive Government but according to conventions which respect their ability and integrity. I would not agree to the notion that judges should be appointed by a body representative of the judiciary. That is a formula for monochrome judicial appointments and also, sometimes judicial cronyism.

**Art 13 - Penal responsibility:** I do not understand this provision. A judge should be no higher nor lower in respect of ordinary crimes and civil wrongs than any other citizen. In most English-speaking countries, the judiciary has nothing whatsoever to do with the investigation of criminal offences. Such investigation is regarded as completely incompatible with the judicial office.

**Art 16 - Remuneration and retirement:** "The reduction should not occur during judicial service" rather than "working life of a judge".

It should read "annuity or pension" and should be provided in accordance with law. The law can deal with such matters as professional category.

*Art 18 - Public Prosecution:* I repeat that in most common law speaking countries it is regarded as completely incompatible with the judicial office for judges to have anything to do with public prosecution. I recognise that this is not so in other traditions. Perhaps what is needed is a definition provision which makes it clear that the principles apply to judicial officers however designated ie as judges, magistrates or otherwise and, where a judge serves in the office of public prosecution, to such a judge.