

ANAO Meeting Minutes
October 17, 2016
Mexico City

The AANO meeting was called to order at 9:20 a.m.

The following persons were present:

Justice Serik Baibaturov
Justice Yerkhan Totybay
Justice Yeldos Zhumaxanov
Justice Elsie Ochoa D'Acosta
Justice Erik Rolom Suarez
Justice Yen Chih Chen
Justice Tsung-Yang Huang
Judge Neng-Chao Hong
Justice Yin-Lun Lin
Judge Chin-Chih Kao
Hassan Ahmed Al-Attar (observer)
Justice Roslyn Atkinson
Justice Jennifer Davies
Justice Tony Pagone
Judge Peter Hall
Judge Charles Simpson
Judge Marilyn Huff
Judge Allyson Duncan
Judge Margaret McKeown
Honourable Louise Mailhot
Justice Robert Blair
Justice Julie Dutil
L'hon. judge Thomas Cyr
Justice Susan Himel
Justice Courtney A. Abel

As a preliminary matter, Justice Pagone set out the general order of the discussion of items on the agenda. The business session would be conducted prior to lunch, the Plenary Session following lunch, and the elections at the end of the meeting. The discussion thereafter generally followed the order of the pre-distributed agenda.

A. Business Meeting

1. Welcome and Apologies

Justice Pagone welcomed delegates attending an ANAO meeting for the first time: Justices Elsie Ochoa D'Acosta and Erik Y. Rolom Suarez from Puerto Rico; Justice Courtney Abel representing Bermuda; Judge Marilyn Huff from the United States and Justice Susan Himel from Canada.

Justice Cyr conveyed the regrets of Marc Richard, who was unable to attend.

Judge Tsogt conveyed his regrets.

Hassan Ahmed Al-Attar of Iraq conveyed the regrets of delegate Haidar Hanoun who was not present but hoped to attend later.

2. Meeting minutes

a. The minutes of the meeting in Barcelona, October 5, 2015, were approved during the mid-year conference call on April 16, 2016.

b. The minutes of the April 16, 2016, were circulated prior to the meeting. Justice Davies moved the adoption of the minutes, and Judge Hall seconded the motion. The minutes were approved.

3. The minutes and agendas from the other regional groups were noted and discussion tabled.

4. President's Report

a. Justice Pagone reported on the ANAO budget. Reserves combined with the IAJ contribution for the year 2015-16 less expenses leaves ANAO with \$19,114.05 as of October 7, 2016.

b. (Iraq). Hassan Ahmed Al'Attar, who is not a delegate, asked to address the group and remain at the meeting as an observer. The delegates agreed. Mr. Al'Attar reported on the circumstances of ANAO delegate and President of the Association of the Iraqi Judiciary, Haider Hanoun Zair Ahmid. Judge Hanoun was, at the time of the meeting, facing a disciplinary hearing in Iraq as a result of giving an interview critical of the handling of a corruption charge against a member of Parliament. Adverse actions had also been taken against the Iraqi Judges' Association. Mr. Al'Attar requested the support of the IAJ in addressing the situation.

Mr. Al'Attar was not aware of a letter IAJ President Christina Crespo had already written to the Prime Minister in that regard. Justice Pagone read a copy of the letter to the delegates. Mr. Al'Attar expressed appreciation for the sentiments it contained, which he believed were adequately responsive. Mr. Al'Attar later reported receiving word from Judge Hanoun that the latter's hearing had been concluded.

c. (Turkey). The delegates discussed the status of events in Turkey and the arrest and detention of thousands of judges and prosecutors. Particular concern was expressed over the safety of colleague Mehmet Tank, who, as far as was known, remained in custody. The Committee will continue to monitor events closely.

d. Justice Pagone reported on initiatives of the Presidency Committee, including anti-corruption, judicial ethics, and the Universal Charter. He invited input from Committee members suggesting additional initiatives.

At this point in the meeting, IAJ President Christina Crespo came in to address the Committee. She welcomed ANAO to the 59th Annual Meeting and wished the Committee well in its efforts, saying that she is well aware of the particular issues ANAO faces.

President Crespo highlighted several areas of importance. She spoke of the efforts following the last Annual Meeting in Barcelona to fulfill the IAJ's plan of activities for the 2015-16 period in the fight against corruption, the extension of relations with new countries and the update of the new Universal Charter of the Judge. President Crespo expressed the IAJ's ongoing concern over circumstances in Turkey, and also spoke of the situation in Venezuela, which does not recognize the right of association of judges in general.

5. Brochures

Judge Duncan circulated a draft of a brochure describing the IAJ to be used in recruiting new members. In meeting with members of Supreme Courts in several countries, it was necessary to explain what the IAJ is and does before talking about ANAO. The brochure can be used to serve both as an introduction and a reference for future use. The delegates approved funding in the amount of up to 1000€ to produce the quantity of documents the funds would support.

6. Monitoring procedures

Justice Pagone raised the issue of compliance with the monitoring process put in place when the IAJ eliminated the category of extraordinary members. Some countries have not complied with the process, and there are instances in which it appears that the country no longer meets the standards reflected. After discussion, the Committee agreed to suggest that the Presidency Committee consider streamlining the process and perhaps only require updates after the submission of the initial report.

7. Applications for membership

Justice Pagone reported on various efforts to recruit new members. For example, he has reached out to India, Judge Duncan has met with Chief Justices of the Supreme Courts in Singapore, Hong Kong and Vietnam: and Judge Tsogt has also reached out to judicial colleagues in Asia. Justice Pagone referred the members to the applications from Mauritius, São Tomé and Príncipe and East Timor for individual consideration prior to a vote on admission to the IAJ.

8. The IAJ Universal Charter of the Judge

The existing IAJ Universal Charter of the Judge was adopted on November 17, 1999, at the Central Council meeting in Taiwan. At the 58th Annual IAJ Meeting in Barcelona, Justice Pagone appointed Justice Dutil and Judge Duncan to represent ANAO in that effort, and both submitted comments for consideration. A meeting of the group was scheduled during the meeting in Mexico City to consider the comments.

9. Justice Robert Blair moved the adoption of a resolution that the ANAO Regional Group establish the Honourable Louise Mailhot Medal in recognition of Ms. Mailhot's vision and dedication as founder, historian and committed supporter of ANAO, and that she be awarded the first such medal. Justice Pagone seconded the motion, which passed unanimously. The medal is to be awarded to individuals who have made an outstanding contribution to the activities of ANAO.

Ms. Mailhot thanked the ANAO members for the recognition, and reminded the members that the day of the meeting, October 16, 2016, was the 19th anniversary of the founding of ANAO. She also made available two copies of her work, The History of ANAO.

10. ANAO Member Association Reports

a. Kazakhstan

There are now 2600 members of the National Judges' Union. The organization has started publishing a magazine, distributing 5000 issues per month. All of the members will attend a meeting in Astana next month, and President Nazarbayev will be the keynote speaker. Judicial reform efforts continue. The levels of the judiciary have been reduced from five to three--trial court, appellate court, and court of Cassation. The change has increased accessibility to the courts and expedited its processes.

b. Puerto Rico

Puerto Rico has a new President of its nine member Supreme Court and the direction she plans to take remains to be seen. Two particular areas of concern were identified: judicial discipline and media access to the courts. With respect to the

former, it is a matter of concern that complaints against the judiciary can be made by, and proceed on the basis of, anonymous complaints. The implications of this process on judicial Independence are apparent. With respect to the latter, the judiciary is concerned about media access to the courts. The media is now allowed to be present in the courtroom without the permission of the individual judge.

c. Taiwan

Taiwan had made initial efforts toward the adoption of a jury system, but momentum in that direction has stalled. It is, however, considering other forms of legal reform.

Under the current system, civil and criminal courts exist in each district, and decisions can be appealed to the High courts and then the Supreme Court. Administrative cases are handled in a separate system, with administrative tribunals deciding cases in the first instance and appeals to the High Administrative Court and the Supreme Administrative Court. Above the Supreme Court and Supreme Administrative Court sits the Constitutional Court, which (1) interprets the Constitution and (2) resolves conflicting interpretations of statutes and regulations. Petitions regarding (1) constitutional interpretation can be brought to the Constitutional Court by one of four parties in various postures: (a) a government agency that questions the constitutionality of a statute or regulation or disagrees with another government agency, (b) an individual who alleges constitutional violations and who has exhausted other legal remedies, (c) one-third of legislators who doubt a provision governing their functions, or (d) sua sponte by the justices of the Supreme Court or Supreme Administrative Court in cases. Petitions regarding the (2) uniform interpretation of statutes or regulations may be

brought by (a) or (b). Thus, under the current system, an individual can only file a petition challenging (1) interpretation of the Constitution or (2) the uniform interpretation of a statute or regulation after having exhausted legal remedies (b). The “cause of action” relates to the specific statute or regulation, and not the individual’s particular case. Taiwan is considering adopting the German system that would allow individuals to file petitions with the Constitutional Court to address issues of constitutional and uniform interpretation via the specific, substantive case in which they were involved.

d. United States

Judge Duncan reported on behalf of the Federal Judges Association of the United States. Having worked for a number of years to achieve some form of compensation relief and having finally done so, the Association is looking for new ways to provide value for its members. For example, it has affiliated with a benefits consultant who will be available to advise members as to the best benefits packages for their individual circumstances. It has improved the format of its website to improve its engagement with membership. It provides frequent security bulletins to its members, providing advice and addressing issues of both personal security and cyber-security. And it is improving its Judicial Independence and Civics Education initiatives along the lines of those efforts undertaken by the American Bar Association.

e. Bermuda

Justice Courtney Abel, appearing on behalf of Bermuda, described the Caribbean Court of Justice (CCJ). He explained that for the CCJ to have appellate jurisdiction, Caribbean countries have to affirmatively agree. Most of the islands voluntarily retain their membership in the Commonwealth and the Judicial Committee of

the Privy Council (Privy Council), the British court of highest instance. Both independent territories, such as Jamaica, and independent republics, such as Trinidad and Tobago, continue to allow the Privy Council to hear appeals from their domestic courts and render a final binding decision on criminal and civil issues. Fourteen Caribbean territories cede full appellate jurisdiction to the Privy Council, and only four, Barbadoes, Belize, Guyana and Bermuda, recognize the appellate jurisdiction of the CCJ.

f. Canada

Justice Dutil introduced Justice Himel from the Ontario Superior Court. Justice Himel is the President of the Canadian Association of Judges. The Association has approximately 1000 members of a total of 1100 federally appointed judges.

This past January, the Quadrennial Commission on judges' remuneration held hearings in Ottawa. The Judges Act provides for a process to review remuneration every four years. The Association and the government each appoint a representative. The government is to respect the Commission's recommendation unless it has a very good reason not to. The government has not respected the last three reports, and this year no increase is recommended.

An important question this year involved the annual adjustment of salaries. The government wanted to use the Consumer Price Index (CPI) instead of the average earnings in Canada (IAI) which is higher. The Commission decided to retain the IAI.

Justice Dutil reported that the government wants to modify the disciplinary process for judges. The Association submitted a report and made a presentation on the issue to the Canadian Judicial Council and the Ministry of Justice.

And finally the Association was consulted on modifications made by the government to the nomination process for judges.

g. Australia

Justice Atkinson discussed issues in Australia which impact judicial independence, such as the executive appointment of judges and judicial discipline. Justice Atkinson and Justice Davies also talked about the relationship between the judiciary and the media, and the public criticisms judges receive that are not always well-founded.

B. ANAO Elections

The election of ANAO officers took place. Justice Pagone was elected President, Judge Duncan was elected Senior Vice President, and Justice Dutil was elected Junior Vice President.

C. Plenary Session

Justice Robert Blair moderated the Plenary Session. The topic for this year's meeting was Judicial Accountability. In June of 2016, the International Commission of Jurists published a Practitioner's Guide on the subject which served as the basis for the discussion. Panel members Justice Lin, Justice Atkinson, and Judge Hall led the discussion.

Justice Blair and the panelists framed the topic in the following way:

Judicial Accountability:

- To whom and for what?

- About what?
- To be accomplished how?
- With what consequences?

The general topic was divided into three areas, each led by one of the panelists.

- The tension between safeguarding judicial independence and the rights of the judge on the one hand, and the need for a system that maintains public confidence in the judiciary and the disciplinary process itself on the other (Justice Atkinson);

- Particular issues in developing countries (Justice Lin); and
- The composition and mandate of disciplinary bodies, and their fairness, openness or the lack thereof (Judge Hall).

1. Australia

Justice Atkinson had circulated a paper on Judicial Accountability from an Australian Perspective prior to the meeting. She noted increased interest recently in the ways in which misconduct falling short of that warranting removal has been handled. However, the issues raised by the ICJ Guide remain relevant.

The concept of judicial accountability has to be considered in the context of the relationship between the persons or institutions to be held accountable and the ones to whom they are accountable so, for example, although at the broadest level, the judiciary should be accountable to the society it services, that does not mean what is popular. Rather, it means that judicial opinions should be compliant with the constitution of the state and international legal obligations. Similarly, accountability to the legislature and the executive do not imply sub-ordination, but rather the rendering of opinions based on

legal rules and reasoning, and impartial fact finding based on evidence, free from corruption or improper influence and subject to appropriate judicial review.

Appropriate processes and entities are also necessary to impose sanctions or discipline, as required. With respect to federal judges, although a provision of the constitution provides the legal basis for removal, until recently there were no formal mechanisms in place for handling complaints. In 2013, legislation was enacted to provide for the establishment of a commission to assist Parliament in implementing the constitutional provision.

No federal judge has been removed from office under the Constitution, although one effort was made to do so. A Justice of the Supreme Court of Queensland has been the only judge to be removed from office since federation. Both efforts were initiated and decided by the executive and legislative branches, which has obvious implications for judicial independence. The presence of an established Judicial Commission or Commissions, such as exists in New South Wales and will exist in Victoria, would help to address this concern.

2. Taiwan

Justice Lin noted that Taiwan was facing the significant challenge of “transitional justice,” concerning the criminal cases which were prosecuted or tried during the Age of Authoritarian Rule, essentially from August 15, 1945 until April 30, 1991. During that period, it is believed that there are criminal cases, particularly those involving political dissidents, which were not investigated or prosecuted according to fundamental constitutional principles of due process.

There have been calls from scholars and members of the public to reinvestigate the cases, and a document called “Provisions of Promotions of Transitional Justice” has been drafted. The draft has passed the first examination by the legislature. Attention has focused not only on the victims but also on the possible offenders, such as the police, prosecutors and judges. The situation has been complicated by the fact that the newly inaugurated President’s nominations for President and Vice President of the Grand Justice court have drawn criticism regarding possible involvement in several of the criminal cases, and have withdrawn their nominations. Justice Lin asked the participants to share their experiences with regime change, and particularly change from authorization rule to democracy.

3. The United States

Judge Hall addressed the composition of judicial disciplinary bodies in the US. Judge McKeown had circulated copies of testimony given by Judge Anthony Scirica of the Third Circuit Court of Appeals before Congress on this topic. Judge Scirica serves as Chair of the Judicial Conference Committee on Judicial Conduct and Disability, whose charter includes overseeing the administration of the Judicial Conduct and Disability Act of 1980.

Under the statute, Chief Circuit judges and circuit councils and the Judicial Conference itself investigate and remedy complaints about judicial misconduct. In other words, the authority to address complaints about judges is vested within the judiciary itself, rather than entrusted to an external entity. The Judicial Conference adopted a Code of Conduct as the standard for federal judges. A general discussion among the panelists and Committee members ensued.

Following the panel discussion, there being no further business, the meeting was adjourned.