

INTERNATIONAL ASSOCIATION OF JUDGES
STUDY COMMISSIONS: POSSIBLE FUTURE DIRECTIONS

1 The work of the study commissions is an essential part of the IAJ. One of the objects of the IAJ is to study judicial problems together. Article 3.1(d) of the *Constitution* lists one of the objects of the IAJ to be:

“to study together judicial problems, whether these are of regional, national or universal interest, and to arrive at better solutions to them.”

This object is to be pursued in part by meetings of study commissions. Article 3.2(a) of the *Constitution* states that the objects of the IAJ are to be pursued “by the organisation of conferences and meetings of study commissions”.

2 Article 7 of the Regulations made under the *Constitution* deals with study commissions and states:

Study Commissions

Four Study Commissions are set up:

1st Commission: The organization of the Judiciary; the status of the judiciary; the rights of the individual.

2nd Commission: Civil law and procedure (comparative and international aspects of these).

3rd Commission: Criminal law and procedure (comparative and international aspects of these).

4th Commission: Public and social law (comparative and international aspects of these).

Each Study Commission shall be composed of one representative from each Association who will be nominated each year at the request of the General Secretariat. If an Association does not communicate names of new representatives, it will be understood that the current representatives continue in office.

The subjects to be studied shall be decided by the Central Council after the Chairperson of the Commission have been heard. The Central Council will fix the times and places of meetings. Each Commission shall elect its Chairperson and two Vice-Chairpersons for two years. The Chairperson and the Vice Chairperson may be re-elected once. The election will take place at the end of the annual meeting.

The Chairperson will determine the working methods of the Commission and will prepare the questionnaire and the general report. The Chairperson may be assisted by a secretary whom the Chairperson may select at will from the Judges of the same Country. The Chairperson may communicate directly with the members of the Commission.

The Secretary General, if so requested by the Chairperson, is charged with

coordinating the work of the members of the Study Commission, and particularly with the circulation of the Chairperson's questionnaire and the members' reports, and the translation of the reports into languages other than the original. The members' reports should include proposal for subjects to be studied in the future.

After the end of each session, the Chairpersons submit to the Secretary General copies of all reports and other documents, to be kept in the archives of the Association.

The Secretary General is charged with ensuring the widest possible distribution of final resolutions.

The four study commissions are not independent associations: they are an integral part of the IAJ. The chairperson of each commission has the power to determine "the working methods" of the relevant commission, but the subjects to be studied are determined by the Central Council after hearing from the chairperson of the study commissions. These arrangements are important in emphasising the nature of the study commissions as integrated organs of the wider IAJ body.

- 3 An issue which should frequently be raised for discussion and for renewed reflection is how the study commissions can fulfil the important objective of studying together judicial problems. Article 7 contemplates the use of questionnaires, but that model of study should not limit the fulfilment of the objective as stated in Article 3.1(d) of the *Constitution*. The use of questionnaires should serve the fulfilment of the objective and not be a limitation of the objective.
- 4 Study commissions should be encouraged to broaden the way in which they fulfil the objectives they are intended to serve. The members of the study commissions should be encouraged to "determine the working methods" they use to deepen their study in fulfilment of the object in Article 3.1(d) of the *Constitution*. It is also desirable that the participants at the study commissions believe that they obtain value from their attendance. There should be something tangible which those attending study commissions can see that they have obtained and that they can report upon when they return to their respective jurisdictions. It is essential that delegates are able to justify to their national association their attendance at IAJ meetings. An important way in which they may be able to do so is by what they study and gain by participation in the study commissions. Those meetings are a valuable opportunity for the IAJ as a body to provide value to the delegates and to the national associations.
- 5 The use of questionnaires to study judicial problems may sometimes detract from the best way in which problems are studied. Questionnaires should remain one of the methods in

which judicial problems are studied by the study commissions. However, the use of questionnaires can be less prescriptive, and can be more facilitative, in the ways in which judicial problems are studied by the study commissions. Some different options are proposed below to be considered to ensure that study commissions are better able to fulfil their objectives:

A Questionnaire model as it currently exists.

B Issue presentation model, which could work as follows:

- (a) An issue would be identified for study: for example such topics as “aspects of expert evidence”, “aspects of independent bodies to investigate complaints against judges”, “judicial remuneration”, “case management”, etc
- (b) A judge from within a study commission would be asked to prepare a presentation on selected aspects of the topic. The aspects selected for presentation could be discussed and decided (or simply indicated) at a previous session or by discussion of a committee. The presentation could focus upon some aspect of a topic that is distinctive in a jurisdiction or in which the chosen judge has special expertise and experience (eg the Canadian and US experience of simultaneous trials by video in cross border insolvency). The presentation could also include examples of precedent documents that might be useful as templates or adapted with modifications in other jurisdictions. The judge responsible for the principal presentation would be asked to circulate the written presentation to the chairperson of the study commission six months before the annual conference. An advantage of this approach is to provide useful content and a reference point for learning. The circulation of precedents used in courts would give useable and useful materials to the judges and, by discussion, would promote the development of best practices amongst IAJ members.
- (c) Two other judges from within the study commission (but from different jurisdictions) would be asked to prepare commentaries on the principal paper. The purpose of the commentaries would be to deepen and broaden the understanding of the issues by looking at them from different perspectives to reflect the diversity of membership of the IAJ. For example, the principal paper may be prepared by a common law judge, one of the commentaries

could be prepared by a civil law judge, and the other commentary prepared by a judge from another country whose history and legal heritage provides unique or different experiences and perspective.

- (d) The written principal presentation and the commentaries would be circulated to the study commission participants one month before the annual meeting. This would enable delegates to read the materials and would provide an opportunity for translation of the material – especially amongst those delegates whose language is not one of the official languages (eg: Japanese, Russian, Croatia, etc). That would greatly help the fuller participation of the delegates at meetings of the study commissions.
- (e) The three presenters would each speak to (not read out) their papers at the meeting of the study commission for a predefined period of time. The three oral presentations would then be followed by lengthy discussion, debate and exchange of views.
- (f) The report for the study commission on this model would comprise the principal presentation, the commentaries and an addendum comprising a note of the main issues emerging from the discussion of the meeting of the study commission.

C Study tour model:

The adoption of a study tour model should be considered by the study commissions as an option where appropriate. The use of a study tour model for the work of some study commissions on some occasions would enable the study commission to take advantage of a unique opportunity that is not otherwise available to any association in a comparable scale.

The essential element of the study tour model is to take advantage of the fact that the IAJ in meeting at a location to study an aspect of a judicial problem in the host country. The focus of the study commission would be the way in which the topic chosen for study is dealt with in the host country and could expose the study commission to a broader range of information and knowledge that the present model permits.

One possible study tour model might consist of the following:

- (a) A speaker from the host country on the topic chosen for study. The speaker need not be a judge.
- (b) Commentaries of interested parties from within the country on the selected topic. The commentaries might be by leaders of the bar, government or academic who could give an informative and useful insight from their perspective of how the host country deals with the topic chosen for study.
- (c) Location visits.
- (d) Discussion at the study commission.

A very successful study tour was organised by Justice Robert Blair for the ANAO meeting held in Toronto in 2014. The delegates to that meeting heard from the judge in charge of commercial cases and a leader of the profession involved in such cases. The delegates were able to visit a number of courts and to discuss aspects of the cases with the judges conducting them.