

POSSIBLE ROLE OF THE INTERNATIONAL ASSOCIATION OF JUDGES

Contemporary Challenges on the Independence of Judges and Lawyers from a Global Perspective, Long Island, New York

9 – 11 February 2019

On behalf of the International Association of Judges (**‘the IAJ’**), I express our gratitude in having been asked to attend this important retreat and symposium of experts to address the contemporary challenges to the independence of judges and lawyers from a global perspective. The role I have been asked to take in this event is to focus upon what part the IAJ can have in that process.

In 1985 the United Nations adopted the declaration basic principles on the independence of the judiciary. Much has happened in the 34 years that have passed since then and our understanding of the challenges facing the judiciary across the globe has also deepened over time. The IAJ has also matured and changed greatly over that same period. It was founded in Salzburg (Austria) in 1953 with six associations of judges from six different countries agreeing to form an international association. Only one of those associations at the time, the association from Brazil, was not a European association. The IAJ currently encompasses 90 national associations or representative group from five continents representing diverse jurisdictions with profoundly different cultures, histories and systems. There is, therefore, within the IAJ a rich and deep representation of judiciaries from across the globe that can greatly influence and inform the task presently undertaken at this symposium.

The IAJ does not have an extensive secretariat or access to substantial funds but is nonetheless able through its structures and relationships to pool the knowledge and wisdom of its core constituents in a variety of ways that may

greatly assist the work hoped to be produced from this symposium. Modern technology and means of communication now enable quick and efficient communication across the globe. We are divided into four regional groups with formal structures within each for representation of those countries within each regional group. The ANAO group, for example, which my Australian association belongs to, has as its president Judge Allyson Duncan from the United States of America and two vice-presidents, one from Canada and the other from Taiwan. That regional group, like each of the other regional groups, holds at least one regional group meeting each year and in recent years has held an education session on a topic of interest and concern to its members. The ANAO group, for example, includes representatives from such diverse countries as the United States of America, Canada, Taiwan, Mongolia, Kazakhstan, Australia, Puerto Rico, Mexico and until recently, Iraq. The breadth of membership is large and illustrative of the breadth of diversity represented in each of the other regional groups which together makes the IAJ.

The IAJ is able also to assist more formally in the development of the issues considered in this symposium more broadly. It meets annually and has four permanent study commissions each of which considers matters of particular concern to the judiciary. The four study commissions are, in broad terms, concerned with questions of the rule of law, civil disputes, criminal disputes and judicial practice and conduct. The work of each study commission is determined in the year preceding each meeting so that, for example, the work that each of the study commissions will consider at the 2019 meeting in Kazakhstan will have been adopted at the meeting in 2018 in Marrakesh. The potential significance of the study commissions to the work of this symposium, is that it may be possible for the study commissions to consider in detail different aspects relating to the United Nations basic principles on the independence of the judiciary by reference to each of the particular matters of

focus of the study commission. The first study commission is the most natural to consider the broader issues posed by this symposium and to a large extent has already done so indirectly in recent years. Each of the other three study commissions, however, may meaningfully inform the work and issues raised by the matters considered in this symposium by considering, for example, how the particular questions raised in the basic principles may be impacted upon in the particular contexts of civil disputes, criminal disputes and broader questions involving judicial work, practice and conduct. The detailed work of each of the study commissions is in large part a matter for the study commissions to decide but they do so with the formal approval of central council of the IAJ and, in any event, there may be some scope to influence and suggest the direction of some of the work which the study commissions may wish to undertake in the 2020 meeting.

An important aspect of the role that the IAJ may have in the work contemplated by this symposium arises directly from the work which the IAJ has undertaken recently with the development of the Universal Charter of the Judge that was adopted in 2017, and also in consequence of our participation in the global integrity initiative of the United Nations which was launched in April 2018. The work done in those contexts can help to inform many of the issues necessary to be considered when reviewing the United Nations declaration of the basic principles of the judiciary. The international conference organised in Marrakesh at which the keynote speaker was Dr Oliver Stolpe will also meaningfully inform many of the aspects to be considered in assessing the challenges and threats relevant to the 1985 United Nations declaration. That conference drew upon a wide range of expertise from within the judiciary and also from outside it. The papers given are available on the IAJ website and my own summary is attached to this paper as Appendix A by way of general illustration.

Perhaps the most fundamental way in which the IAJ may assist in the development of the issues posed by this symposium may be seen from the objects of the IAJ and its work. The objects are to safeguard the independence of the judiciary and to maintain the rule of law. The mission of the IAJ, in other words, lies at the very heart of the 1985 United Nations declaration and the form and content of the declaration is of fundamental concern and importance to the IAJ and to each of its members in the 90 countries that it currently represents.

An aspect of the IAJ debate concerns the complicated relationship between questions of independence and questions of accountability. The address by Dr Stolpe at our conference in 2018 placed significant importance on the need for judges, and judiciaries, to be accountable. Calls for accountability, however, are sometimes made by those who wish to influence how a decision is reached and, therefore, may potentially lead to a diminution of independence rather than to an accountability of independence. It is fundamental to the confidence that any society has in its judiciary that those who are authorised to decide disputes do so without external influence or interference. Those who go to a third party (a judge) to have a dispute resolved need to feel confident that the dispute will be resolved and is decided (especially if adversely to them) by someone who is not influenced by third parties whether that third party be from the government, political parties, aggrieved members of the public or anyone else. There is, however, an important role for judicial accountability provided that the role is understood to be an accountability of independence. Independence does not exist where there is corruption. Nor does it exist where a judge is influenced in the decision by reference to political parties or sectional interests. It is fundamental to accountability, therefore, that the independent nature of the decision be clear, visible and real. The importance of judges in developing the principles of accountability was emphasised by Dr Stolpe in his

address to the IAJ in Marrakesh in 2018. It is an example of how the IAJ may meaningfully inform the discussions and debates to be pursued by and from the symposium through the breadth of experience and diversity which the IAJ may institutionally bring to those discussions.

As a mechanical matter what the IAJ is able to do is to access the breadth and wealth of its members in 90 jurisdictions across the world. We do not represent all of the judiciary and there are some notable exceptions whose views should be sought, although judicial independence appears not to exist in the case of China and Russia. We can, however, access the views and input of a large segment of the global judiciary both through individual contact with different national judiciaries as well as with deliberative and considered views of different jurisdictions when they meet in study commissions and in regional groups to discuss matters of common interest by reference to different perspectives and experience. The judicial associations represented by the IAJ accounts for 90 of the total of 195 countries of the world and the total number of judges represented by the associations which belonged to the IAJ 2015 were estimated to be 119,623 of the total number of 171,090 judges in those countries.

The IAJ can be most useful in facilitating understanding, acceptance and (where appropriate) advocacy of any changes to be proposed to the 1985 UN declaration. The IAJ's structure and relationships are able to access the largest segment of the world's judiciary and engage with the judiciary in developing the content of any changes, explaining what those changes may mean, and engage with the judiciary to achieve acceptance and understanding. It will be significant to the future of any proposed changes to the UN charter if they have the backing of the associations of judges and are endorsed and explained by judges to other judges.

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