

SIXTH COMMISSION

*The Position of the International Judge*

Rapporteur : M. Gilbert Guillaume

RESOLUTION

*The Institute of International Law,*

*Recalling* its resolutions concerning the Statute of the International Court of Justice adopted during the Sienna Session on 24 April 1952 and the Aix-en-Provence Session on 26 April 1954;

*Considering* the significant evolution undergone in the meantime by international justice, and in particular the establishment, besides the International Court of Justice, of numerous specialized courts and tribunals, both at the universal and regional levels;

*Mindful* of the diversity of such international courts and tribunals as well as of their common mission, needs and requirements;

*Desiring* to contribute to the development of international justice and *intent on* promoting its authority and effectiveness;

*Taking* into account the report of its Sixth Commission;

*Adopts* the following guidelines:

*Article 1*  
Selection of Judges

1. The quality of international courts and tribunals depends first of all on the intellectual and moral character of their judges. Therefore, the selection of judges must be carried out with the greatest care. Moreover, States shall ensure an adequate geographical representation within international courts and tribunals. They shall also ensure that judges possess the required competence and that the court or tribunal is in a position effectively to deal with issues of general international law. The ability to exercise high jurisdictional functions shall nonetheless remain the paramount criterion for the selection of judges, as pointed out by the Institute in its 1954 Resolution.

2. Procedures of selection of candidates both at the national and international levels should support the above-mentioned principles and should, as necessary, be improved to that end.

3. From this standpoint, it seems that the national groups of the Permanent Court of Arbitration do not always play the role accorded to them by the relevant texts. In this respect, all States Parties to the 1899 and 1907 Hague Conventions, in compliance with their obligations, should establish a permanent national group, notify its composition to the Bureau of the Court and make sure that the group's membership is periodically renewed. Moreover, it is important that, before nominating, fully independently, candidates for the International Court of Justice or the International Criminal Court, national groups carry out consultations with judicial and academic authorities as provided by Article 6 of the Statute of the International Court of Justice. Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of candidacy.

4. In certain countries, national groups play a role in the selection of candidates to other international courts and tribunals. This practice deserves to be applied more broadly.

5. In any case, the relevant procedures shall be such as to ensure the selection of candidates having the required moral character, competence and experience, without any discrimination, in particular on grounds of sex, origin or beliefs.

6. The selection of judges should be carried out taking into consideration, first and foremost, the qualifications of candidates, of which political authorities should be fully apprised. It must be noted, in particular, that elections of judges should not be subjected to prior bargaining which would make voting in such elections dependent on votes in other elections.

#### *Article 2*

#### Term of Judicial Functions

1. In order to strengthen the independence of judges, it would be desirable that they be appointed for long terms of office, ranging between nine and twelve years. Such terms of office should not be renewable.

2. During their entire term of office, judges shall enjoy irremovability. Judges may be removed from office only if they cease to meet the required conditions for the performance of the judicial function, and following a decision adopted by their peers in accordance with due process. Such a decision could be preceded, if necessary, by a suspension of the judge concerned. In addition, these decisions should be taken by qualified majority voting, for example a three-quarters majority.

#### *Article 3*

#### Status of Judges

1. Members of each permanent international court and tribunal should be treated on the basis of absolute equality, including as regards remuneration.

2. They may not exercise political or administrative functions, or act as agents, counsel or advocates before any courts and tribunals.

3. Should judges engage in any other external activity, such as teaching or arbitration, if not prohibited by their statute, they shall afford absolute priority to the work of the international court or tribunal to which they belong. Moreover, they may not engage in any activity capable of impinging on their independence or susceptible of raising doubts on their impartiality in a given case.

4. It is undesirable for judges serving in courts and tribunals with a heavy workload to engage in arbitrations or in substantial teaching activities.

5. Special procedures should be set up within every international court or tribunal in order to regulate such matters. In any case, judges shall first request the authorization of the president of the court of which they are members. The president will decide, first and foremost, according to the interests and the needs of the international court or tribunal. Similar procedures are required when it appears that there is a risk of incompatibility in a particular case.

6. A former judge should not act as agent, counsel or advocate before the court or tribunal of which that judge has been a member during at least three years following the end of his/her term.

#### *Article 4*

#### Remuneration and Conditions of Service

1. International judges should receive remuneration allowing them to perform their functions in the best possible conditions. Such remuneration shall not be reduced during their term of office. Therefore, it should be regularly adapted to the cost of living in the country where the seat of the court or tribunal is located. An appropriate retirement scheme shall be provided for full time judges of international courts or tribunals.

2. Judges should be provided with adequate assistance in order to perform their functions satisfactorily.

#### *Article 5*

#### Organization of International Courts and Tribunals

The independence of courts and tribunals depends not only on the procedures of selection of judges and their status, but also on the way in which the court or tribunal is organized and operates. In this respect, the registries of international courts and tribunals, while enjoying the independence necessary to carry out their tasks, should remain under the ultimate authority of the court or tribunal itself. The international court or tribunal shall have exclusive responsibility to submit proposals to the relevant budgetary authorities, and shall be in a position to defend those proposals directly before such authorities. The latter may not substitute their appreciation to that of the court or tribunal in the management of its staff.

*Article 6*  
Immunities and Privileges

The main purpose of immunities and privileges is to ensure the independence of judges. Therefore, judges having the nationality of the State in which the court or tribunal is located or having their permanent residence in that State at the time of their appointment should be accorded the same immunities and privileges as their colleagues.

*Article 7*  
International Part-time Judges

The principles set out in this Resolution relating to the qualifications and the independence of judges apply to part-time judges. The other provisions of this Resolution only apply to them as may be needed.

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