



# NEWSLETTER

## *Letter from the President, call for 19th IAP Annual Conference, Dubai*



Burj al Arab, Dubai

**M**y first contact with the IAP was the second European regional conference in The Hague twelve years ago; the topic was juvenile delinquency. Before that event I had little experience in the international field. Comparative criminal law was not taught at my university (or any other in Austria at the time) and the professional contacts that I had with prosecutors from other countries were restricted to Germany, Slovakia and Hungary. To say it in short, what I knew about prosecutorial work outside of my little country was next to nothing! Then came the conference in The Hague and within twenty minutes of our regional conference I learned, that Scotland has its own judicial system, which is independent from England and Wales and from Northern Ireland. I learned some funny sounding titles (no offence meant; ours aren't much better) and what the respective roles of prosecutors and the police are. Then I learned the most shocking fact: the age of criminal responsibility in other countries can -under certain

### *In this issue:*

-  Letter from the President  
P. 1

---

-  Diary Dates  
P. 2

---

-  Report on the 14th IAP  
European Regional  
Conference  
P. 3

---

-  Counsel's Comment  
P. 5

---

-  Assessment of the  
Amendments to Law 6087 on  
High Council of Judges and  
Prosecutors of Turkey  
P. 7

---

-  Report on the Global Summit  
Sexual Violence  
P. 11

---

-  Prosecutors Thailand / Korea  
P. 14

---

-  Report on the 9th IAP Asia,  
Pacific and Middle East  
Regional Conference  
P. 15

---

-  Executive Committee  
Meeting Quebec  
P. 18

circumstances -be less than half the age we have in Austria or Germany (14 years). Like most humans I fell for a very simple mistake: Having invested many years in my legal training at University and at the courts, I was more or less convinced that „my“ system was basically the best. How ignorant I was then! Within two days at this conference my legal horizon wasn't only broadened a little, it now started to expand over huge parts of Europe. What helped, was to discuss a case, the murder of James Bulger in 1993. All participants had to think through, how their respective systems would have dealt with two ten year old suspects. In my country, a family court judge would have to choose between several possibilities to better control and help with their education. But this judge would act alone, without prosecution or defence. In several other jurisdictions there would be a real criminal trial with the benefit of prosecution and defence. In the end the judge (or jury) in these systems would have basically the same possibilities to deal with the accused children as in my own. But the verdict would follow a modern trial with all rights for the defendants safeguarding that the proceedings follow the principles of the rule of law. My point is not that a criminal trial against juvenile defendants is generally the better solution than any kind of family court. My point is, that I learned to respect different solutions to similar problems and that maybe there are better solutions out there and that we could adopt them to tackle problems in our system. Besides, I found out that being together with colleagues from other countries is not only rewarding in the sense that you find future contact points in case you need them. It is rewarding in itself, because we had stimulating discussions - and great fun. Attending this conference changed my professional life forever. I started to attend

other IAP conferences and my circle of friends from around the world still keeps growing. Every single presentation and discussion contains some new advice or piece of information, every new contact helps me to better understand what our profession is really about. I'm still not tired of this, on the contrary, otherwise I wouldn't be writing this Letter from the President. I'm still learning from my colleagues all over this planet. And I hope that I can help others to share this great experience. The IAP is all about this experience. At it's conferences, the Prosecutors Exchange Program, it's publications and in the virtual world on our websites. The next time the IAP family meets in real life will be this November in Dubai during **the 19th IAP Annual Conference and General Meeting**. We expect around 500 prosecutors from around 100 countries to attend and share the experience. I would be glad if you, dear reader, will attend as well.

**Gerhard Jarosch**  
**President IAP**



### *Diary Dates*

**International Association of Penal Law,**  
Congres on Cybercrime,  
18 September 2014, Rio de Janeiro, Brazil

**19th IAP Annual Conference and  
General Meeting,**  
23 – 27 November 2014, Dubai, United Arab  
Emirates

**IAP Executive Committee Meeting,**  
April 2015, (date tbc), Kingdom of Bahrain

**20th IAP Annual Conference and  
General Meeting,**  
13 – 17 September 2015, Zurich, Switzerland

**21st IAP Annual Conference and  
General Meeting,**  
11 – 15 September 2016, Dublin, Ireland



## *Report on the 14th IAP European Regional Conference held in Zagreb, Croatia, from 26-28 March 2014*

*Lara Barberić*

*Senior Advisor at the General State Attorney's Office of the Republic of Croatia*



**The State Attorney's Office of the Republic of Croatia had the honor of hosting the 14th IAP European Regional Conference in Zagreb, Croatia, from 26–28 March 2014.**

With the deepening of the integration process within the field of criminal law at the European Union level, judicial cooperation in criminal matters became a burning issue within the legal profession. Thus, the topic of the Conference, **Modern Instruments of Judicial Cooperation in EU Member States – Reality and Myth**, perfectly suited the interests of the participants. Namely, the Conference was attended by over 40 legal professionals from 19 countries who deal with cases involving judicial cooperation in criminal matters on a daily basis.

Participation in the Conference allowed the attendees an appreciation and insight into the differences as well as the similarities of their work within different legal systems, positioned against the backdrop of the shared conference topic. This enabled participant to gain new and enriched perspectives of the legal issues related to cooperation in criminal matters. In addition to addressing different aspects of judicial cooperation in criminal matters, the participation in the Conference was an ideal opportunity to establish an international network of colleagues dealing with cases related to the Conference topic.

The Conference opened with a speech of Attorney General of the Republic of Croatia, Mr. Mladen Bajic, who expressed his pleasure in hosting such an important conference, and who stressed the increasing importance of judicial cooperation in combating crime. Furthermore, the Minister of Justice of the Republic of Croatia, Mr. Orsat Miljenič gave a welcome speech and emphasized the relevance of the Conference topic in the light of Croatia being a new Member State of the European Union.

The Conference topic was introduced by the President of the IAP, Mr. Gerhard Jarosch who stressed the significance of the Conference for prosecutors who deal with cases concerning judicial cooperation in criminal matters in their daily work.

Following the introduction of the topic, the Conference continued with an inspired presentation from Ms. Malči Gabrijelčič, national member for Slovenia at Eurojust. Ms. Gabrijelčič addressed the role of Eurojust in judicial cooperation and coordination, and provided the audience with valuable insights into the work and objectives of Eurojust. The presentation of Ms. Gabrijelčič was a unique opportunity to hear about the competences of Eurojust from a colleague directly involved in its work, especially in regard on how Eurojust can support competent national authorities and help in improving their coordination and cooperation so as to render their investigations more effective.

The importance of coordination between national authorities in tackling crime more efficiently was also greatly emphasized in the presentation of Mr. Poul Gade, Chief Prosecutor in East Jutland Police, Denmark.

The contributions of Ms. Janne Holst Hübner, and Mr. Derk Kuipers served to remind us of the importance and the advantages of the global network of prosecutors for judicial cooperation in EU Member States. Through their efforts, we received all the relevant information on how to become a part of this global network and use it to the benefit of our work.

The Second day of the Conference began with the presentation of Mr. Stefan Waespi, Federal Prosecutor, Office of the Attorney General, Switzerland, who gave a presentation on freezing and confiscation of the assets of an offence. This presentation then opened a very lively and productive discussion on the topic he presented. His presentation placed into perspective the need for efficient judicial cooperation in freezing and confiscation of the assets of an offence. It was somewhat comforting to hear that issues raised in regard to confiscation and freezing were not unique to any jurisdiction but that we all encounter similar problems and challenges.

During the Conference, the issues concerning special instruments of judicial cooperation developed at the EU level, such as the European Arrest Warrant, the European Evidence Warrant, and the European Investigative Order were also raised. Recognizing the importance of the European Arrest Warrant, the first and the most prominent instrument at EU level that incorporated the principle of mutual recognition into criminal matters, a very valuable contribution was made by Ms. Danka Hržina, Senior



Advisor at the General State Attorney's Office of the Republic of Croatia. In her presentation, Ms. Hržina shared the Croatian experience in the application of the European Arrest Warrant. In addition to having a chance to hear the Croatian perspective on European Arrest Warrant, I was given the opportunity to present the principles on the application of European Arrest Warrant established by the decisions of the Court of Justice of the European Union.

The presentation by Ms. Ulla Oinonen on the European Investigation Order which, as argued, should simplify the requests for investigative measures by judicial authorities in order to obtain evidence in another EU country, and which is to be adopted in the near future, provided an indispensable contribution to the Conference. This new EU instrument of judicial cooperation between EU member states was compared with its not so successful predecessor the European Evidence Order.



Mr. Silvij Šinkovec closed the Conference by stressing the utmost value of joint work of prosecutors in effectively fighting cross border crime. The advantages of establishing a network of contact points within prosecutorial offices were shared with Conference participants.

Overall, the Conference was very well received by the audience, and was deemed a success. Namely, it achieved its goal of exploring judicial cooperation in criminal matters from different perspectives, and was perfectly designed to match the interests of the audience. Various presenters from different countries gave thorough assessments of instruments of judicial cooperation and managed to engage the audience in discussions. Furthermore, the topics discussed are most likely to be a great asset to the work of all the attendees.

**Lara Barberić**





## Counsel's Comment

Dear members

Since I wrote my last “Comment”, the IAP has held 2 regional conferences; The 14th IAP European Conference in Zagreb in Croatia 26 – 28 March 2014 “Modern instruments of judicial cooperation in EU Member States – reality and myth” and the 9th IAP Asia Pacific and Middle East Conference in Sydney, Australia in association with the Australian Association of Crown Prosecutors took place from 2nd to 4th of July. Sadly IAP finances did not stretch to allow my participation in Croatia, but I was very pleased to attend and speak at the Sydney event, not least because it was my first visit to Australia. Both events were heralded successes and are dealt with in more detail elsewhere in this magazine, but I should like to add my personal thanks to the organisers for hosting these events. We are constantly looking for hosts for our regional conferences, aimed principally at frontline prosecutors who benefit greatly from meeting colleagues from other jurisdictions and derive value from the programmes, which are designed to be educative and instructive.

Our IAP Executive Committee Meeting was held in Quebec in May, thanks to Sabin Ouellet, Chief Prosecutor, Department of External Affairs of the Quebec Prosecution Service and President of the AIPPF (the French counterpart of the IAP). The venue was the iconic Frontenac Hotel with its famous copper roof. My room was in one of the turrets - ‘The Hitchcock Room’ because he had stayed there whilst filming; fortunately I experienced no ‘Phsyco’ moments whilst showering. A full report of the meeting can be found in this newsletter.

I flew straight from Quebec to Vienna in Austria for the 23rd UN CCPCJ (Commission on Crime Prevention and Criminal Justice) where I spoke about ‘International Cooperation in Criminal Matters: current gaps and perspective of the International, Regional and National Legislations’. I had mentioned this engagement in the last Newsletter when I expressed the hope that I would be able to launch the ‘IAP Prosecutorial Guidelines for Cases of Concurrent Jurisdiction’ and I am pleased to say I did! These Guidelines are confined to criminal offences and aim to assist prosecutor practitioners address some of the challenges arising from the globalisation of crime and cross-border criminality and can be downloaded from our website and will be available in hard copy at our conferences. Thanks go in particular to Danya Chaikel who coordinates our Forum on International Criminal Justice (FICJ) and



who was the main author of this publication, with some help from myself.

Danya and I also contributed significantly to the final stages of the ‘International Protocol on the Documentation and Investiga-

tion of Sexual Violence in Conflict: Basic Standards of Best Practice’ launched by the UK Foreign and Commonwealth Office at the Global Summit to End Sexual Violence in Conflict held in London from 10 to 13 June 2014. The main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law. It does this by setting out the basic principles of documenting sexual violence as an international crime, gleaned from best practice in the field. The Protocol can serve as a tool to support efforts by human rights and justice practitioners to effectively and protectively document sexual violence as a crime under international law – as a war crime, crime against humanity, or act of genocide. The protocol can be downloaded from the IAP website. A full report on the Global Summit which I attended together with Danya Chaikel is in this newsletter.

The joint IAP/ODIHR (Office for Democratic Institutes and Human Rights) ‘Guidance on the Prosecution of Hate Crime’ which I anticipated in the last newsletter will be launched at the World Bank Law Justice and Development Week in Washington 20-24 October. The IAP will be hosting a panel on the 22nd and I shall be convening a number of distinguished panellists drawn from our membership and associated organisations. One such organization is the Criminal Justice Section of the American Bar Association with whom we have recently signed an Agreement to Cooperate. IAP members will be able to attend ABA events at discounted rates and we have already begun to collaborate on a number of events - for example the ABA White Collar Crime Conference - to be held in London on 13 and 14 October this year and in Shanghai next year.

The IAP has also recently signed a Memorandum of Understanding with a commitment to work together and exchange relevant information with the AIDP/ IAPL-International Association of Penal Law.

In the last newsletter I mentioned that funding from the UK Government Cyber Capacity Building Fund had been used to enhance the IAP website and the GPEN (Global Prosecutors E Crime Network) sub-site in particular. I am pleased to report that we have secured further funding for this year from the same source, to maintain and improve the site. Still on the subject of cyber crime, the report to Commonwealth Ministers which emerged from a working group I sat on facilitated by the Commonwealth Secretariat is available to be downloaded from the GPEN site. The report contains recommendations for the development of national strategies and enhanced coordination in efforts to combat cybercrime. In their endorsement of the report, Ministers recognised that the Commonwealth is leading the way in the development of international mechanisms to combat cybercrime.

In newsletter 60, I reported on the formation of an International Criminal Justice Consortium (ICJC) to provide capacity building assistance through practical legal skills workshops, the sharing of best practices and expertise, and other collaborations for national and international criminal justice institutions including the International Criminal Court (ICC). The ICJC now has a website [www.icj-consortium.org](http://www.icj-consortium.org).

ILAC (The International Legal Assistance Consortium), has a regular newsletter now and you can subscribe to if you enter the website (which has a new web address) [www.ilacnet.org](http://www.ilacnet.org). I am a member of the ILAC Council and ILAC Executive Committee on behalf of the IAP. ILAC which helps rebuild justice system in post conflict or fragile places, has a number of projects in progress and planned which may be of interest to members. I maintain a data base of those who wish to be considered for any project work overseas

and I regularly post requests for assistance or indeed job offers. I recently circulated an advert for the post of Chief Prosecutor in Vanuatu.

Last but not least, I am thrilled to announce the imminent publication of 'The Status and Role of Prosecutors - A UNODC-IAP Guide' and many thanks to those who contributed. Whilst the production process has been slower than wished, there is no doubt that this publication will be... 'a further milestone in getting the IAP Standards universally accepted as customary law. The entrenchment of the principles of independence of the prosecution, adherence to the rule of law and general fairness to prosecutors strikes trenchantly...' (per William Downer, Deputy Director of Public Prosecutions, South Africa.).

**Best regards**  
**Elizabeth Howe**  
**General Counsel**  
**International Association of Prosecutors**  
**PO Box 373**  
**West Malling**  
**ME6 9DH**  
**England**  
**Tel and fax: +441732 522828**  
**Mobile: +447775 937848**  
**E mail: [elizabeth.howe@cps.gsi.gov.uk](mailto:elizabeth.howe@cps.gsi.gov.uk)**



---

## *General Counsel's Position*

The position of General Counsel - currently occupied by Elizabeth Howe - is expected to fall vacant towards the end of 2015. Elizabeth will by then have occupied the position for 8 years. We are now starting to look for Elizabeth's successor.

The General Counsel is responsible for the professional work programme of the IAP and the position calls for a prosecutor of standing whose first language is English.

If you want to know more about the position and if you are interested in applying, please contact Derk Kuipers, IAP Secretary General [sg@iap-association.org](mailto:sg@iap-association.org).

Elizabeth would also be happy to be contacted [Elizabeth.howe@cps.gsi.gov.uk](mailto:Elizabeth.howe@cps.gsi.gov.uk).

**All expressions of interest submitted to the SG by close of business on Friday 24 October 2014.**



# *Assessment of the Amendments to Law 6087 on High Council of Judges and Prosecutors of Turkey*

*Engin Durnagöl*

*Judge, Court Ankara*

The main goal of state of law is to limit the authority of the state in compliance with laws, and therefore to secure the rights and liberties of the individuals by allowing this authority to govern within the limits. The realization of that goal requires all actions and proceedings that are conducted with public power to be subjected to judicial review in terms of their compliance with the law. Therefore, all activities of administrative authorities, including legislation and execution, must be under judicial review. However, the positive outcome of judicial control depends on safeguarding the independence of the judiciary. The independence of the judiciary has two dimensions: institutional and individual. The Institutional independence means the maintenance of judicial proceeding according to the principle of rule of law without any intervention or interference. Institutional independence means the maintenance of judicial proceeding according to principle of rule of law without any intervention.

Considering the situation in Turkish Republic, we can see that the separation of power exists in Turkey, according to the article 9 of the Constitution stipulating “Judicial power shall be exercised by independent courts on behalf of the Turkish Nation” Indeed, these provisions have the potential to ensure the institutional independence. Nevertheless, in practice, not only the politicians but also of Supreme Courts, military and civil bureaucrats, journalist, at times, do not care this very principle, and sometimes they make statements, which will mean influence and recommendations concerning the matters dealt by courts. The principle of independence of the judiciary cannot be improved merely by constitutional engineering. The truth is that the independence of the judiciary could only be sustained through a behavioral culture by all main actors and offices in line with the rule of law.

The individual independence of the judiciary can be provided by securing that personal matters of all members of the judiciary shall be protected while executing the constitutional and legal duties. Individual independence of the judiciary requires the judgment

over personal views of the members of the judiciary who shall be delegated by autonomous councils, which are called “Councils for the Judiciary”. In many countries, there are councils for the judiciary under such names as “High Councils for the Judiciary” or “High Councils for Justice” which enable the members of the judiciary to enjoy self-governance. In some other countries, there are independent and autonomous bodies which carry out financial and administrative management of courts with powers on the appointment of judges and prosecutors and their career progress depending on varying examination systems in different countries. Councils for the Judiciary are the bodies which guarantee the independence, effectiveness, transparency of the judiciary and the quality of the judicial system; and in Turkish Republic this institution is High Council of Judges and Prosecutors (HCJP/HSYK) which went through reformations after the Constitutional Referendum on September 12, 2010, holding its first Plenary Session on October 25, 2010. Moreover, Law 6087 on High Council of Judges and Prosecutors – the Council’s organizational law – entered into force and the Council was envisaged as a financially and administratively independent body. To be honest, In the past ten years of EU membership process, Turkish Republic has realized many notable improvements and novelties in legal fields in terms of democracy, rule of law, separation of powers, establishing and promoting the independence of the judiciary; therefore, one of the greatest judicial reforms in the history of the Republic was the 2010 re-formation of High Council of Judges and Prosecutors, which is the safeguard of the independent judiciary in Turkish Republic, in line with democratic principles.

Before the referendum in Turkey there was a HCJP/HSYK with 7 members whose structure and functioning had started to be criticized in time in the reports published during the progress of the internal and external public opinion and especially the progress of the EU. That is the reason why the criticized structure of the HCJP/HSYK was changed with the 2010 Referendum. As a result of the referendum, the HCJP/HSYK gained an independent structure and no any organ,

authority or person will not give orders or instructions to the HCJP/HSYK while carrying out its duties and authorities.

However, on December 17, 2013, an investigation was launched by the Chief Public Prosecutor's Office of Istanbul on the corruption and bribery regarding four members of the Cabinet (Minister of Interior, Minister of EU Affairs, Minister of Economics, and Minister of Environment and Urbanization) and some high-ranked bureaucrats and businessmen who allegedly became unjustly enriched via illegal procedures, which led to a conflict between the government and the judiciary. As a consequence of this investigation, on February 27, 2014, a highly questionable bill was put in effect following its adoption by the Parliament and approval by the President of the Republic, which will clearly subordinate High Council of Judges and Prosecutors (despite its independent status protected by Turkish Constitution) to the Ministry of Justice; as it was blamed not to have played a sufficient role to hinder the investigation.

In order to explain better, it is possible to specify the changes as below:

I. HCJP's authority to issue circulars and regulations was limited; circulars adopted by the entry into force of the amendments were abolished; only the regulations that comply with the amendments will remain in force:

a) The Council will be issuing circulars only in those areas enumerated in the Constitution. These include: recruitment, admission, appointment, transfer, authorization, promotion, supervision, examination, investigation, etc.

b) The Minister will be issuing circulars with instructions to judges and prosecutors concerning their judicial and administrative duties including on effective investigation and investigation procedures, judicial police, corruption, arrest and detention, autopsy, documentation procedures, transfer processes.

c) The argument put forward during the parliament debate for the transfer of the responsibility to issue circulars from the Council (Plenary) to the Minister was that the judicial review against the circulars issued by the Council was not possible and that this would not be the case for those circulars issued by the Minister. However, such a review has always been possible: the Council of State can examine, supervise and evaluate decisions of the High Council's Plenary as general regulatory process vis-à-vis the regulations and circulars via interpretation. However, no such case against circulars by HCJP has been brought to the Council of State yet. In addition, an appropriate amendment to the

law subjecting Council decisions to judicial review could have addressed the issue if the problem was thought to exist still.

II. The powers of the Minister of Justice – as the President of HCJP – have been significantly increased:

a) The Minister has significantly increased powers over the career of judges and prosecutors, and the Inspection Board is subordinated to him/her:

- The responsibility for the appointment of the president and of the deputy presidents of the inspection board is taken away from the Plenary and passed on to the Minister;

- In the previous form of the law, the Inspection Board was independent from the Ministry of Justice. And it performed its duties under the supervision of Head of Third Chamber on behalf of HCJP. Besides, the inspectors of the Council were accountable to the President of the Inspection Board while they perform their duties. The President of the Inspection Board was accountable to HCJP as well. Due to the new amendments, the inspection board is ultimately functioning under the supervision of the Minister, the inspectors of the Council are functioning under the supervision of the President of the Inspection Board, and the president of the inspection board is accountable to the Minister.

As a consequence of the fact that the inspectors are assigned to the investigations by the President of the Inspection Board who will be appointed by and accountable to the Minister, the Minister in fact is assigning inspectors on various tasks; s/he could request information about on-going investigations and could indirectly guide the course of investigation.

- In line with the law, judges and prosecutors go through routine performance evaluations every two years by the inspectors of the Council. And these evaluations are taken into consideration in the promotion and transfer in their career. As mentioned previously above, as a consequence of the new role of the Minister on the Inspection Board, he/she could influence routine performance evaluations of the work of judges and prosecutors.

The president of the inspection board has the authority to evaluate the inspectors and the deputy presidents of the inspection board. Since the president of the inspection board is now accountable to the Minister, the Minister will have the opportunity to influence via the president of the inspection board the evaluation of the deputy presidents, chief inspectors and inspectors.

- The Minister is now responsible to evaluate the performance of the president of inspection board putting thus the latter's independence against the former, and

therefore, the executive branch of the government, is into serious risk.

b) The Minister's powers are increased as regards the composition, duties and powers of the chambers and the selection of their heads:

- The power to allocate the members among the chambers as regular or substitute members (substitute members of a chamber are those members of another chamber who attend meetings of a chamber that cannot reach quorum to convene) is taken away from the Plenary and given to the Minister.
- Heads of chambers will be selected by the plenary with at least 12 votes out of a total of 22 from among two candidates proposed by the members of the chamber. However, the members of chambers are appointed by the Minister. Under the previous legislation, the whole process was conducted by the plenary.

c) The allocation of workload by Secretary General is subject to the approval of the Minister.

d) The appointment of the president and deputy presidents of the inspection board and the deputy secretary generals of the Council is taken from the Plenary and given to the Minister.

e) The Minister of Justice will be controlling appointments of Council staff. This power is taken from the Secretariat General and given to the Minister opening thus this recruitment procedure to interference from the executive branch of the government.

f) The procedures of disciplinary investigation and prosecution against the members of the Council will be controlled by the Minister of Justice. The Minister will be conducting disciplinary investigations against the elected or appointed members of the Council; this means that the Minister will act as prosecutor for these disciplinary investigations. Whereas in the previous form of the law, the disciplinary investigations against all members of the Council were launched and conducted by the Plenary.

g) The procedures of investigation and prosecution against the elected members of the Council about the crimes other than their duties are changed, and the Minister, as the president of HCJP, becomes efficient in granting permission for investigation. According to the amendments, the permissions for the prosecutions against the elected members of the Council concerning the crimes in their duties and private lives are to be granted by the Minister, as the president of HCJP. Accordingly, the Plenary will conduct the investigation

based on the files prepared by the Minister. In other words, the Plenary becomes a court.

h) In the previous law, as the President of the Council, the Minister of Justice could only approve the supervision, examination and investigation against judges and prosecutors upon the proposal by Third Chamber; whereas now, in addition to the authority mentioned, as the President of the Council, the Minister of Justice possesses the authority to decide whether it is necessary or not to conduct these investigations against judges and prosecutors upon the proposal by the relevant chamber, which allows the Minister to veto and override the decisions of Third chamber. Although the fact that the veto of the Minister is open to judicial review could be considered a positive development, the Minister will have the power to launch investigations against any judge or prosecutor by vetoing the contrary decision by Third Chamber. Despite the fact that EU reports criticize the Minister's power to veto, his powers are extended to such a degree that it will now include the decisions of Third Chamber on examinations and investigations.

III. The authority of the Plenary is limited due to the powers given to the Minister:

a) The Plenary will no longer have the authority to "transfer the excessive workload of one chamber to another chamber". And this power is given to the Minister.

b) Previously, the Plenary was to convene automatically on the 10th working day of January to determine the dates for regular meetings of the Plenary; however, the adopted bill will take this authority and give it to the Minister who will also determine the days of the Plenary meetings as well. Due to this amendment, the Minister will determine the dates of the Plenary meetings, and also the Minister will not to call the Plenary to convene if he/she so desires.

c) The appointment procedures of reporter judges and inspectors are changed. The constitutional power given to the Plenary concerning these appointments is limited unconstitutionally, and the Plenary is supposed to select two candidates proposed by First Chamber, the members of which are selected by the Minister, for each position.

IV. For the members to be elected by higher courts and justice Academy, "one man, one vote" system is adopted. This amendment is the same as the one previously annulled by the Constitutional Court (Constitutional decision numbered Principle 2010/49 and 2010/87). This rule reading "for the members to be elected by higher courts and justice Academy, "one man, one vote" system shall be used" was previously

annulled and abolished by the Constitutional Court as it violated the democratic state of law.

V. The judges and prosecutors of first instance courts can vote as many as the total number of original and substitute numbers. However, the candidates needs to have at least 20 years of active experience as a judge and prosecutors (this requirement will be in effect for the next five years which include two election terms):

a) The Constitution stipulates that the requirement to be elected as a member of the Council is “being first class and retaining the qualifications of the first class”, which is stipulated in law 2802. Normally, judges and prosecutors can fulfill this requirement in 13 years. However, the recent amendment increases this to 20 years, which deprives thousands of judges and prosecutors from the right to be a member of the Council. Three current members of the Council cannot be re-nominated.

b) According to the constitution and law on HCJP, academicians and attorneys with 15 years of experience could be appointed to the seat of the Council by the president of the republic whereas the new requirement for the members of the judiciary is 20-year experience.

c) The final paragraph of the article 67 of the Constitution stipulates “the amendments to the election laws cannot be put in effect in the elections in the upcoming year”. Therefore, this amendment cannot be applied in the HCJP election of 2014, but according to the newly added 5-year rule, this article will be applied in the election of 2014, which violates the article 67 of the Constitution.

VI. Except for the members of the Council, the whole staff (a total of 456 people) will be terminated, including secretary general, deputy secretary generals, president and deputy presidents of the inspection board, inspectors, reporter judges and other administrative staff.

VII. Assessments of the novelties brought by the amendments to law 2802 on judges and prosecutors.

a) In comparison with the previous system, the Ministry will be the sole authority in selecting judges and prosecutors for education and assignment overseas instead of HCJP; not only those at the bench but also the judges and prosecutor at the Council, including secretary general, deputy secretary generals, the president and deputy presidents of the inspection board, inspectors, and reporter judges. As a result of this amendment, the Ministry will be using this as a reward and punishment system against judges and prosecutors.

b) In the previous system, the in-service training which is a right and duty for judges and prosecutors is planned and conducted by HCJP. However, the amendment envisages that the power to plan and conduct in-service training for judges and prosecutors and to issue

regulations on in-service training will be taken from the Council and taken over by Justice Academy. Considering that the amendment to the law on Justice Academy will end the autonomous structure of the Academy, it will provide the Ministry of justice with a more efficient role over the in-service training via Justice Academy.

As you see most of the amendments are not only in violation of Constitution but also in violation of international documents and reports defining the principles concerning the composition of the Councils for the Judiciary (Venice Criteria, Progress and Consultative Visit Reports, CCJE, Rec10/2007, Committee of Ministers of CoE Rec94/12 on the Independence, Efficiency and Role of Judges, ENCJ Reports).

Furthermore, the amendments do not concur with the Judicial Reform Strategic Document, Activity Plan, Accession Partnership Document, and National Program adopted and implemented by the Government. Essentially in these documents, the Government had adopted the principle that HCJP be composed and established on the principles of objectivity, impartiality, transparency and accountability and broad-based representation. It also contradicts with the matters about the Minister of Justice and the Undersecretary stated and written in the national and international reports.

In conclusion, High Council of Judges and Public Prosecutors is the central pillar of the Turkish judicial architecture. It plays a crucial role in the promotion and transfers of, and disciplinary proceedings against judges and public prosecutors, including their removal from office. Its proper functioning is thus obviously important with regard to the independence, impartiality and effectiveness of the judiciary in Turkish Republic. That is why, it must not only be independent and impartial itself, but also protect and promote the independence and impartiality of the judiciary as a whole. Yet, under these conditions, HCJP/HSYK cannot protect nor promote the independence and impartiality of the judiciary. The current law allows the Minister of Justice virtually to control and command HCJP/HSYK which raises serious concerns on the independence and impartiality of the judiciary and the principle of the separation of powers in Turkish Republic.





## *Report on the Global Summit to End Sexual Violence in Conflict held in London from 10 to 13 June 2014*

**The IAP's General Counsel, Elizabeth Howe, and FICJ Coordinator, Danya Chaikel recently contributed to a new Protocol on the Documentation and Investigation of Sexual Violence in Conflict, which was launched at the Global Summit to End Sexual Violence in Conflict held in London from 10 to 13 June 2014, which they also attended.**



IAP's FICJ Coordinator, Danya Chaikel and General Counsel, Elizabeth Howe, attend the Global Summit

**S**exual violence in conflict – including rape, sexual slavery, forced prostitution, forced pregnancy, and forced sterilization/abortion – wreaks havoc amongst innocent populations and embodies one of the most heinous crimes committed during war. According to the United Nations, in Rwanda, between 100,000 and 250,000 women were raped during the three months of genocide in 1994. More than 60,000 women were raped during the civil war in Sierra Leone (1991-2002), more than 40,000 in Liberia (1989-2003), up to 60,000 in the former Yugoslavia (1992-1995), and at least 200,000 in the Democratic Republic of the Congo since 1998. As UN Special Representative on Sexual Violence in Conflict, Ms. Zainab Hawa Bangura rightly puts it, “sexual

violence in conflict needs to be treated as the war crime that it is; it can no longer be treated as an unfortunate collateral damage of war.”

**A**nd it is these horrifying statistics together with marginal levels of accountability, which led UK Foreign Secretary William Hague and Special Envoy of the UN High Commissioner for Refugees Angelina Jolie, to form a unique partnership and co-host the historic Global Summit to End Sexual Violence in Conflict from 10 to 13 June 2014 in London. This forms part of the UK's broader global initiative to prevent sexual violence in conflict. The Summit was the largest gathering of its kind to date bringing together attendees from 129 governments, 79 ministers, over 1,700 experts, faith leaders, youth organizations, representatives of civil society and international tribunals and organizations, Nobel laureates as well as victims and survivors. Notably the IAP was well represented, with a number of individual and institutional members as well Executive Committee members contributing as Chairs, speakers and participants in the ministerial dialogues.

**T**he aims of the Summit were ambitious: to shatter the culture of impunity, take practical steps, support survivors and change attitudes. The organisers hope to turn political commitment into practical action to overcome the barriers to ending sexual violence in conflict. They recognise however that this change will require persistence, innovation and continued leadership on the part of governments, experts, civil society, legal professionals and security forces. As Angelina Jolie stated at the Global Summit, “we need to shatter that culture of impunity and make justice the norm, not the exception, for these crimes.” There was an overriding consensus among delegates that the issue was finally getting the attention it deserved, and that the time has come for the international community to finally address wartime sexual violence.

**T**he Summit's official meetings largely focused on identifying key challenges that need to be overcome. Delegates attended various parallel sessions which addressed issues such as improving documentation and investigation, lessons learned from prosecuting sexual violence in conflict, enhancing military

capabilities, and exploring specialised models for ensuring justice for sexual violence in conflict. Recommendations were identified for future action to implement the commitments contained in both the G8 Global Declaration on Preventing Sexual Violence in Conflict and the 2013 UN General Assembly Declaration of Commitment to End Sexual Violence in Conflict.

**W**hile the formal discussions were ongoing, the Summit also hosted Fringe events for the public including mock trials, a silent cinema, theatre performances, music, photography exhibitions, discussions and debates, workshops and a market.

**T**he second day was ‘Ministerial Day’, and in the opening plenary session we heard impassioned speeches from William Hague, Angelina Jolie, UN Special Representative on Sexual Violence in Conflict Zainab Hawa Bangura, Nobel Laureate Leymah Gbowee, the EU’s Baroness Ashton, the AU’s Dr. Nkosazuna Dlamini Zuma among others. Ministers from around the world then heard directly from experts about the nature and impact of sexual violence in conflict and recommendations on combatting and prosecuting wartime rape.

**T**he Summit’s closing plenary session opened with a video message from UN Secretary General Ban Ki-moon. William Hague, Angelina Jolie, Zainab Hawa Bangura and Lieutenant General David Morrison, chief of the Australian Army, also offered moving closing words. Nobel laureate Denis Mukwege, the medical director of Panzi Hospital in the DRC’s South Kivu received a standing ovation during his address.

**T**he International Criminal Court’s Chief Prosecutor, Fatou Bensouda, stressed in her plenary address the commitment of her Office to ensure a gender perspective in its investigations. She asserted powerfully, “let there be law the world over”. Prosecutor Bensouda also announced her Office’s newly launched Policy Paper on Sexual and Gender-Based Crimes, notably the first ever produced by an international court or tribunal. US Secretary of State John Kerry delivered an inspiring concluding address in which he emphasised the key role that prosecutors have in bringing those who commit acts of sexual violence to justice. He drew on his own experience as a former prosecutor when he set up a priority prosecution unit that took rape cases and put them on a fast-track for trial so they were tried within 90 days after arrests. Secretary of State Kerry stated poignantly, “gender-based violence, anywhere, is a threat to peace, security, and dignity everywhere”.

### **International Protocol on the Documentation and Investigation of Sexual Violence in Conflict**

In the lead up to the Global Summit, the IAP was approached along with several other organisations, to review the draft International Protocol on the Documentation and Investigation of Sexual Violence in Conflict. The Protocol which was launched at the Global Summit, is the first of its kind and is the product of input from more than 200 experts, survivors and organisations who have shared their knowledge and collaborated in the drafting.

**T**he main purpose of the Protocol is to promote accountability for crimes of sexual violence under international law. It does this by setting out the basic principles of documenting sexual violence as a crime under international law, gleaned from best practice in the field. The Protocol is not binding on states. Rather, it can serve as a tool to support efforts by national and international justice and human rights practitioners to effectively and protectively document sexual violence as a crime under international law – as a war crime, crime against humanity or act of genocide.

**T**he Protocol is an ambitious multidisciplinary endeavour. Because of this, it is a living document and its coordinators have aptly called it a “First Edition” to reflect the need to review and adapt the Protocol as needed. The Protocol is a commendable first step towards global accountability for crimes of sexual violence committed during conflict. The IAP was very pleased to contribute as reviewers at this early stage and we offered expertise on international criminal law principles as well as practical issues that arise in prosecuting sexual violence in conflict, such as ensuring that vital evidence is not contaminated by well-meaning ‘first responders’ who may not have the necessary expertise to process evidentiary materials for future criminal proceedings.

### **Beyond the Summit**

The Global Summit to End Sexual Violence in Conflict successfully brought the scourge of wartime rape under the spotlight like never before. This alone is an outstanding achievement, but the question remains: what next?

By the end of the Summit, 155 countries had signed the UN’s 2013 ‘Declaration of Commitment to End Sexual Violence in Conflict’ in which governments “pledge to do more to raise awareness of these crimes, to challenge the impunity that exists and to hold perpetrators to account, to provide better support to victims, and to support both national and international

efforts to build the capacity to prevent and respond to sexual violence in conflict.” While this is certainly praiseworthy, one area of concern is that the Declaration is not a legally binding document and it lacks a clear path forward.

That said, several countries announced substantial financial pledges during the Summit, such as the UK which will invest a further £5 million to prevent sexual violence and help survivors; Finland contributed €2 million to UN Action against Sexual Violence in Conflict ‘Stop Rape Now’ initiative; Germany pledged €1 million to an International Red Cross Appeal; Australia pledged \$5 million for ‘post-conflict support’ to Liberia, Uganda, Timor Leste and Afghanistan.

There will also be ongoing work on implementation of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, which the drafters say they will be continuously updating. They will also distribute the Protocol to practitioners and train them on how to use it effectively and how to adapt it to their particular domestic systems.

At this juncture the main question is, will the hard work done before and during this historic Summit lead to more accountability and less women, men, and children being raped during war? In 10 years’ time will we see more prosecutions of acts of sexual violence in conflict? Will more survivors the necessary medical and psycho social support? Will governments provide training on gender and sexual violence issues to their soldiers? It was best put by UN Special Representative on Sexual Violence in Conflict, Ms. Zainab Hawa Bangura, “this is the best moment we’ve ever had and we can’t let it slip by.”

- To read more about the Summit, click here: [www.gov.uk/government/topical-events/sexual-violence-in-conflict](http://www.gov.uk/government/topical-events/sexual-violence-in-conflict).
- To download the First Edition of the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, click here: [www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict](http://www.gov.uk/government/publications/international-protocol-on-the-documentation-and-investigation-of-sexual-violence-in-conflict).

**Danya Chaikel**  
FICJ Coordinator

### To contact us



IAP

International Association  
of Prosecutors

Hartogstraat 13  
2514 EP The Hague  
The Netherlands

Derk Kuipers  
Secretary-General  
Evie Sardeman  
Office Manager

Tel.: +31 70 36 30 345  
Fax: +31 70 36 30 367  
Mobile SG: +31 6 22 19 82 71  
Email: [sg@iap-association.org](mailto:sg@iap-association.org)  
Email: [om@iap-association.org](mailto:om@iap-association.org)  
[www.iap-association.org](http://www.iap-association.org)

Elizabeth Howe  
General Counsel IAP  
PO Box 373

West Malling ME6 9DH  
United Kingdom  
Tel.: +44 1732 522828 or mobile  
+44 7775 937848

Email:  
[elizabeth.howe@cps.gsi.gov.uk](mailto:elizabeth.howe@cps.gsi.gov.uk)

Janne Holst Hübner  
Special Assistant to the DPP  
IAP Communication Manager  
Frederiksholms Kanal 16  
DK-1220 Copenhagen K  
Denmark

Tel.: +45 3343 6734  
Email: [cm@iap-association.org](mailto:cm@iap-association.org)



## *Thai Prosecutors visited the Supreme Prosecutors' Office of Korea*

*By Jumpon Phansumrit*

*Senior Expert Public Prosecutor*



On 10-13 June 2014, Mr. Manus Suksawasdi, Deputy Attorney General, and Mr. Surasak Threerattakul, Director General of the Department of Investigation, Office of the Attorney General of Thailand (OAG) led a group of Thai prosecutors from the Department of Investigation on a study visit to the Supreme Prosecutors' Office of the Republic of Korea (SPO). The visit was carried out under the framework of the Memorandum of Understanding (MOU) on Cooperation between the OAG and the SPO in Combating Transnational Crime and Laundering of the Proceeds of Crime dated 28 June 2011. The MOU aims to establish close bilateral cooperation between the two agencies in combating transnational crime. Paragraph 4 of the MOU encourages the parties to develop professional contacts and relations between their members in order to effectively update their experiences and to exchange information on combating transnational crime.

Pursuant to Thai laws, the investigation is principally carried out by police, except offenses committed outside Thailand or having extra-territorial jurisdiction. Since, the Office of the Attorney General is the Central Authority on mutual legal assistance and extradition. The Criminal Procedure Code and the new Act on the Suppression of Transnational crime 2013 provide that the Attorney General and prosecutors have investigative power on offenses committed outside Thailand. Transnational crimes are mostly or partially committed outside Thailand and under the investigative authority of prosecutors. Therefore, in October 2013,

the OAG set up the new Department of Investigation to be in charge of all investigation under the responsibility of prosecutors. The OAG has recruited prosecutors from several departments in the OAG to work in the new Department of Investigation.

The SPO has a renowned reputation of effective investigation and prosecution of organized crime and

crimes committed by influential persons and politicians. The visit to the SPO aims to enrich the Thai prosecutors in the new Department of Investigation with enhanced skills and techniques learnt from their Korean counterparts. The Thai visitors had a chance to share and exchange knowledge and experiences with the highly experienced Korean investigating prosecutors. In addition, they could see the operation of the SPO's Digital Forensics Center. They could learn how DNA analysis, voice analysis, image analysis, database and disk forensics analysis work, including the importance of forensic evidence in investigation. The OAG wishes that the knowledge and experience the Thai prosecutors gained from this visit to the SPO will enrich and enable them to handle the new investigation assignment effectively. In addition, the OAG also hopes that the visit will strengthen the relationship and cooperation between the Thai and Korean prosecutors in combating transnational crime in the region.

The Thai delegation wishes to thank the SPO and its staff, in particular Mr. Heo Chul Ho, the Director General of International Cooperation Center, and Mr. Kang Chan Woo, the Director General of the Anti-Corruption Department, whose diligent coordination made for a smooth and successful visit.





## *Report on the 9th IAP Asia, Pacific and Middle East Regional Conference / Annual Conference of the Australian Association of Crown Prosecutors*



### **Prosecutors at the Coalface**

1. The winter sun was shining throughout the 9th IAP Asia Pacific and Middle East Regional Conference which was held jointly with the annual conference of the Australian Association of Crown Prosecutors from Wednesday 2 July to Friday 4 July 2014. The venue was the Sheraton on the Park which overlooks the lush environs of Hyde Park in the heart of the central business district of Sydney, New South Wales, probably the most picturesque major city situated on the east coast of Australia.

2. Those who attended the welcome drinks on Wednesday 2 July 2014 were privileged to experience a Welcome to Country and Smoking Ceremony performed by the Gadigal people of the Eora nation, the traditional custodians of the land upon which we were then standing. We also heard words of welcome from Senator George Brandis QC, the Commonwealth Attorney General, Mark Tedeschi, AM, QC, Senior Crown Prosecutor for New South Wales and President of the Australian Association of Crown Prosecutors and Sal Vasta, Principal Crown Prosecutor, Office of the Director of Public Prosecutions (DPP) for Queensland and IAP Vice President.

3. Delegates came from near and far. There were representatives from Bahrain, Belgium, Bosnia and Herzegovina, Brunei Darussalam, Canada, Chinese Taipei, Cook Islands, Denmark, Fiji, Hong Kong, Indonesia, the Republic of Korea, Kuwait, Macau, Micronesia, Mongolia, New Zealand, Pakistan, Papua New Guinea, the Russian Federation, Saudi Arabia, Serbia, Singapore, Solomon Islands, United Kingdom, USA, Vanuatu and Vietnam. Prosecutors from DPP offices in all six states and two territories of Australia

as well as from the Office of the Director of Military Prosecutions and the Commonwealth ODPP attended.

4. I have been to a number of annual IAP conferences and have enjoyed them immensely but there was a special quality about this regional conference. The relative intimacy and relaxed atmosphere of the gathering seemed to bring participants together and encouraged communication. I had many stimulating conversations with fellow delegates, renewing old acquaintances and making new ones.

5. On morning of Thursday 3 July 2014 the Honourable Brad Hazzard MP, Attorney General for New South Wales, gave a welcome speech as did Lloyd Babb SC, Director of Public Prosecutions for New South Wales. Mr Babb reminded us that there was a strong crime and punishment link with Sydney as it started as a prison colony. He invited delegates to visit a number of impressive buildings, including courthouses, still standing in the inner city which had been built by convicts.

6. The conference proper began with a very entertaining hypothetical led by Nicholas Cowdery AM, QC, former Director of Public Prosecutions for New South Wales and former IAP President. The scenario, which was the subject of discussion involved a police officer who, whilst raiding a drug dealer's garage, accidentally shot dead one of his colleagues after the drug dealer fired at police. Issues covered included the appropriate charge, if any, to be brought against the drug dealer, causation and excessive self-defence as well as admissibility of evidence. Responses from the delegates showed the different approaches which could be taken when analysing the same facts.

7. Serge Brammertz, ICTY Chief Prosecutor General ICTY (International Criminal Tribunal former Yugoslavia), gave a fascinating insight into prosecuting international war crimes. Mr Brammertz highlighted the need to understand the political and religious dimensions of the countries where crimes were committed and noted it was sometimes a delicate exercise to balance national and international interests.

8. He detailed the particular challenges faced by those dealing with international war crimes e ICC including:

- gaining access to crime scenes and witnesses;
- witness protection;

- establishing lines of authority – which often required ‘insider’ witnesses;
- finding documentary evidence, e.g., gaining access to military archives, if there were any, could take many years;
- creating a functioning and efficient data management system;
- identification of victims, particularly where remains were moved;
- selection of the persons and individual crimes to be prosecuted where there were hundreds of thousands of victims and hundreds or thousands of perpetrators; and
- locating and apprehending fugitives.

9. It was a thought provoking presentation for those of us who have had little or no exposure to the workings of the ICTYC. The tribulations of a Western Australian prosecutor pale into insignificance in comparison to the problems faced by Mr Brammertz and his colleagues. Notwithstanding the nature of his work, it was pleasing to find that Mr Brammertz’s sense of humour remains very much intact.



Some of the local organizers, from left to right: Gina O’Rourke, Mark Tedeschi and Kara Shead

10. There was a change of mood during the first afternoon presentation which was entitled ‘Persuasive Addresses’. This took the form of a demonstrational workshop by ‘interactive experiential communications specialists’. Dealing with a group of lawyers can be like herding cats and the workshop facilitator quickly realised his job was not going to be an easy one. Although some delegates may not have agreed with everything suggested by the presenters, e.g., the use of the present rather than past tense when setting the scene in one’s opening before a jury, there was still something to be learned, even for those who have been prosecuting for many years. And being reminded that short, sharp sentences are preferable to long winded ones is always helpful.

11. Mark Tedeschi AM, QC finished off the first work

day of the conference with a presentation entitled ‘Practical lessons for Conducting Complex Homicide Trials’. Mr Tedeschi has prosecuted some of the most difficult and high profile cases in New South Wales one of which was the prosecution of Keli Lane, a successful sportswoman who was convicted of murdering her new-born child whose body was never found. The prosecution of Ms Lane was an example of a circumstantial case where considerable planning was required in respect of the case presentation to ensure that possibilities consistent with innocence likely to be raised by the defence were negated. This necessitated close examination of Ms Lane’s conduct in relation to a number of prior pregnancies as well as her response during the course of the police investigation.

12. Mr Tedeschi reminded us that where there is a media focus on a case prosecutors should not alter the way we present the case or speak – the best approach being to ignore what is going on outside the courtroom as best one can.

13. The evening’s cultural event was a visit to the Sydney Maritime Museum where we had a guided tour of many interesting displays illustrating the maritime history of Australia followed by another chance to mingle.

14. The second day of the conference started with an enthralling presentation, ‘Prosecuting Cyber Crime: The Take Down of Silk Road’ by Serrin Turner, Assistant US Attorney, US Attorney’s Office Southern District of New York. Silk Road was described as a black market Amazon-like website established in mid-2011. It facilitated the buying and selling of illicit substances and items using ‘bit coins’ as currency and provided a venue for money laundering. During Silk Road’s lifetime there were 1.2 million transactions, 150,000 buyer accounts and 4,000 vendor accounts, trades totalling 10 million bit coins [US\$1.2 billion], and commissions totalling 614,305 bit coins [US\$79.8 million]. The investigation, which resulted in the seizure of the website and the arrest of the main target, the creator of Silk Road known as DPR, ran over eight months in 2013. DPR went to great lengths to protect his identity but a combination of technological expertise, attention to detail, clever use of the Google search engine and a lucky break, and other factors which revealed a careless move on DPR’s part, led to his eventual apprehension. Since the case is pending I am constrained from including too much of the detail.

15. Disappointing to hear was the news that while the original Silk Road website had been dismantled Silk Road 2.0 was in existence six weeks later and other copycat sites followed.

16. In his 'Judicial Bullying' presentation, Justice Keith Mason AC, QC, a former President of the Court of Appeal of New South Wales, made the point that both judges and practitioners may be subject to judicial bullying. In New South Wales judges have no recourse after being unfairly criticised in an appeal judgment, unlike India where it was said that a judgment could be quashed on the basis of adverse personal criticism. It was recognised that there was a great potential to cause harm by the repetition of unreasonable behaviour in the courtroom. The profession, including the judiciary, was more conscious of the phenomenon in more recent times due to media attention given to the dangerous psychological impact of bullying and the cost to society of mental illness, which is particularly prevalent in the legal profession. Justice Mason referred to studies which showed that lawyers are more prone to serious mental illness than the general population with one study indicating that 62 per cent of those surveyed had experienced psychological distress. The question was asked whether those who became lawyers had a predisposition by reason of their tendency to be perfectionists, and to be concerned about reputation and the fact they operated in a publicly competitive and exposed hierarchical environment. It was also acknowledged that a judge having mental illness issues may resort to bullying. Increased pressure due to efficiency and economic drives was seen as an issue. A number of examples of judicial bullying were given including:

- eye-rolling;
- talking over counsel;
- sarcasm; and
- references to counsel's personal reputation.

17. Some of the causes of bullying were said to be an entrenched personality style, compensatory mechanisms when feeling insecure, generalised stress and organic causes such as medication, alcohol/drug problems or medical problems.

18. If such a situation arose it was important for counsel experiencing it to put it on the record. There was a role for the Chief Justice of the Court in question as well as the Bar Association in preventing and responding to such behaviour.

19. The importance and usefulness of associations of prosecutors was the subject of presentations given by Wendy Stephen QC, Crown Counsel, British Columbia, Canada, IAP Vice President and President of the Canadian Association of Crown Counsel, and Elizabeth Howe OBE, IAP General Counsel, United Kingdom.

20. Ms Stephen traced the history and achievements of the British Columbia Crown Counsel Association which started with just eight prosecutors meeting in

secret in the mid-1980s in response to adverse changes in the conditions of employment in the prosecution service. When mediation and arbitration failed to change the government's approach in April 1992 there was a 96 per cent majority strike vote. That action resulted in the negotiation of the first employment contract which included a number of conditions requested by the prosecutors' association. After three such contracts had been renewed the government refused to recognise the association. Further successes were achieved during the years to follow with representations being made by the prosecutors' association to the Law Society and further strike action being taken which resulted in more favourable employment contract conditions. This presentation showed what amazing results could be achieved when people stand together.

21. Ms Howe spoke about the history, membership and objectives of the IAP as well as providing information about the various documents published by the IAP and projects which the IAP supports which can may provide assistance to individual prosecutors and prosecution offices elsewhere in the world. Members may have the opportunity to participate in such projects if interested.

22. The international jurisdictional round out was an informative session during which one delegate from each jurisdiction had only a few minutes to summarise recent changes and innovations in their jurisdiction. This is a session that takes place each year during the Australian Association of Prosecutors conference and is invariably met with a favourable response as was the case on this occasion.

23. The final social event of the conference was the conference dinner which took place at a venue with sweeping harbour views. During the course of the dinner we were entertained by renowned classical pianist, Simon Tedeschi, the son of Mark Tedeschi QC, who held the room spellbound with five performance pieces. The after dinner speaker, Richard Ackland, journalist, lawyer, media critic and editor of the legal journal *The Justinian*, provided his acerbic view of prosecutors which was most amusing.

24. And so it was that the conference, which was superbly orchestrated/organised by Mark Tedeschi QC and his two hard-working assistants, both of whom are also Crown Prosecutors, came to a close.

**Louise O'Connor**  
**Senior State Prosecutor**  
**Office of the Director**  
**of Prosecutions for**  
**Western Australia**





## *Executive Committee meets in Quebec*

The Office of the “Directeur des Poursuites Criminelles et Penales du Quebec” played host to the IAP Executive Committee in the beautiful city of Quebec in May this year.

The IAP offers grateful thanks to the hosts, and in particular to Sabin Ouellet for their hospitality and for generously sparing time to show the Executive Committee members around and entertaining them.

The Executive Committee Meeting, held on the 9th and 10th May, was chaired by IAP President Gerhard Jarosch, who opened the meeting by thanking Sabin Ouellet and his office for organising this meeting in the beautiful city of Quebec.

He gave a special welcome to the 6 new members of the Committee; Josip Cule (Croatia), HO Chio Meng (Macau), Mutembo NCHITO (Zambia), Brian Saunders (Canada), Patrick Stevens (England and Wales) and Jean Francois THONY (France) who were all present at the meeting.

The President drew attention to the passing of Nelson Mandela, former President of South Africa. The President reminded the Committee that Mandela in August 2000 were presented with an IAP Medal of Honour for his role in the creation of the Constitution for the new South Africa, with its guarantees of human rights under a just rule of law, and in the establishment of The National Prosecuting Authority of South Africa and the improvement it brings to the conduct of prosecution services throughout the country. The Executive Committee observed a minute’s silence in remembrance of Mandela.

The amended minutes of the previous meeting of the Executive Committee (Moscow 7 September 2013) - which had been published and made available for amendment through the Executive Committee Forum in November 2013 - were agreed as an accurate record.

After a proposal of Sal Vasta about the IAP Regions and the number of IAP Vice-Presidents, it was agreed that the Secretariat should, in cases where there were doubts as to what region a country should belong, contact the local IAP Contact Persons to ask for their preferences. It was further agreed to put the proposal for regional divisions to the General Meeting in Dubai with a suggested amendment to the Constitution: Article 11.1 shall now read: “There will be up to 9 Vice-Presidents of the Association at the discretion of the Executive Committee.”

(the amendments to the Constitution will be published before 26 September on the IAP-website)

Regarding the proposed reform of the administrative structure of the IAP and update of roles of the IAP officials, it was agreed that the Reform Group (Sal Vasta, Gerhard Jarosch, Thomas Burrows and Wendy Stephen) will draft a proposal to present to the

Executive Committee in Dubai

The Secretary General drew attention to the Report of the Bureau of the Secretary General stating that the total number of Organisational Members to be 163. He highlighted that 5 Organisational Members have been deleted from the database due to a persistent lack of payment or due to an expressed wish to end the membership. Those are:

- **Prosecutor General’s Office of Buenos Aires**, PG German Garavano
- **Director of Public Prosecutions** of South Australia
- **Prosecutor General’s Office**, Lithuania
- **Ministry of Justice**, Morocco
- **Ministerio Publico**, Chile

He further reminded members that the following new Organisational Members that has been approved since the last meeting:

- **Office of the Public Prosecutor** of Papua New Guinea
- **Chief Prosecution Office at the Court of Cassation** of the Republic of Turkey
- **Associação do Ministério Público do Estado do Maranhão (AMPEM)**, Brazil
- **Associação do Ministério Público do Estado do Rio Grande do Norte (AMPERN)**, Brazil
- **Associação Piauiense do Ministério Público (APMP)**, Brazil
- **Associação Nacional do Ministério Público de Contas (AMPCON)**, Brazil
- **Associação do Ministério Público do Estado do Amapá (AMPAP)**, Brazil
- **Associação Paulista do Ministério Público (APMP)**, Brazil
- **War Crime Prosecutors Association of Serbia**

The President informed members that the terms of office of the Vice Presidency of North America and 7 ordinary members were due to expire in 2014 (8 terms in total). He further clarified that the Vice President of North America (Wendy Stephen) and 2 ordinary members (Siri Frigaard and Vinette Graham Allen) are obliged to leave the Executive Committee in accordance with the Kampala rules (limit of 2 terms)., he added that 2 ordinary members (Chulasingh Vasantasingh and Lennart Lindblom) have expressed a wish to step down and that 3 ordinary members (Serge Brammertz, Satyajit Boolell and Cheol-Kyu Hwang) have expressed a wish to stay on for another term. The President reminded members about the terms of the Kampala agreement.

The President pointed out that IAP Constitution allows for the election of ex-officio members and he proposed an ex officio seat for Sabin Ouellet as a representative of the AIPPF which would also demonstrate the close and strong relationship between the two associations.

Nobody voted against the proposal which was agreed on the basis that the ex-officio seat was exclusively available for an AIPPF representative.

It was decided that the Secretary General will draft a proposal for amendment of the Constitution in accordance with Article 14 and 16 to be presented to the General Meeting in November in Dubai. (the amendments to the Constitution will be published on the IAP-website before 26 September)

It was agreed to support the nomination of Rory Field as Vice President of North America [his 1st term] and Cheol-Kyu Hwang as Vice President of Asia Pacific [his 1st term].

The President thanked Wendy Stephen on behalf of the Executive Committee for her long standing support and excellent work as exiting VP North America.

It was agreed to support the nomination of following candidates:

- Satyajit Boolell, Director of Public Prosecution, Mauritius
- Serge Brammertz, Prosecutor, ICTY, Belgium
- Mohammed Ahsan, Deputy Director of Public Prosecutions, Denmark
- Nicola Mahaffy, Crown Counsel, British Columbia, Canada
- Runar Torgersen, Senior Public Prosecutor, DPPs Office, Norway
- Christopher Toth, Deputy Executive Director, National Association of Attorney Generals (NAAG) and Director, National Attorneys General Training and Research Institute (NAGTRI) USA
- Athapol YAISAWANG, Attorney General, Thailand
- Mrs HU Zazun, Deputy Prosecutor General, China

The Secretary General updated the Committee on the current status of applications for position of General Counsel.

The Secretary-General will contact the 3 new candidates for the Conflict Committee to ask for their willingness to serve on the Committee and he will announce the final nominations to the Membership.

The Executive Committee decided on the nominations for the Honorary Membership and for other IAP Awards. These nominations are published in this Newsletter.

During the Executive Committee Meeting hosted in Moscow, September 2013, the Secretary-General agreed to introduce a new reporting format that included more detail about impact, or added value, of events attended and speeches made on behalf of the Association, a breakdown of the geographical concentration of membership and the efforts made to increase IAP profile where it was weaker, and also information in relation to ideas for alternative sources of funding etc.

The Secretary-General briefly introduced members to the new reporting format that was published as part of the meeting material and highlighted the fact that this new report format also includes the report of the Com-

munication Manager. The report was received with enthusiasm by the Members of the Executive Committee and was considered to fulfill expectations expressed during the Moscow meeting. The new format was approved.

The Secretary-General and the Communication Manager presented the Report of the Bureau of the Secretary General.

Talking about the Granting Program the Secretary-general reported that he received 4 standard donations (50 USD each) since the opening of the electronic system (mid April 2014); accordingly expectations for income from that initiative are rising.

The Secretary General presented his financial report and made it clear, that the financial situation is healthy. Because of the “forced” bankchange that the IAP had to make the final accounts 2012 and 2013 were not available yet.

The Secretary-General made his apologies for this situation and stated that these documents will be available in time before the Annual Conference and General Meeting in Dubai in November this year.

It was agreed to accept the position provided that full accounts for 2012 and 2013, verified by Deloitte, were submitted to the Committee well in advance of next meeting of the Committee (22 November 2014, Dubai) or otherwise present a statement from Deloitte explaining why accounts are still not available.

The Secretary General presented the proposed Travel Expense Protocol and clarified that the protocol is a written illustration of the procedures followed by the Secretary General when dealing with travel expenses.

The IAP Travel Expense Protocol was approved, in its present form, by the Executive Committee as an administrative practice, provided that travel expenses of IAP officials are included in half-yearly report.

The President briefly summed up the thoughts behind the proposed Financial Overview Committee. He stressed that setting-up a Financial Overview Committee, in his mind, would meet the many demands for more transparency and recommended the Executive Committee approve the proposal.

The following signed up for the Committee: Wendy Stephen, Thomas Burrows and then it was suggested the President contact Michael Kennedy to ask for his willingness to serve on the Committee.

The Secretary General updated the Committee on the report prepared by Van Dooren Advies that produced some recommendations on how fundraising could be embedded within the IAP structures. He proposed to form a small committee that should look into the recommendations and discuss how to proceed. He suggested involving the Communication Manager and two Ex. Com. Members who either work in or regularly visit The Hague which was supported. Proposal was approved. Following people signed up for Committee: Serge Brammertz, Josip Cule, the Communication Manager, Janne Holst Hubner and Secretary-General.

It was agreed that the Secretary-General will draft some recommendations on how to move forward for next Northern Spring Meeting, April 2015 in Bahrain. The General Counsel referred to her extensive report and annexes which she had distributed well in advance.

She clarified that she is passing on the governance of GPEN to Han Moraal who was heading the GPEN Committee that the Executive Committee had insisted on retaining. He would carry the responsibility of leading any further financed development project.

Sabin Ouellet, AIPPF Representative, reported that the IAP Newsletters has been translated into French and made available to the shared Francophone IAP/AIPPF members through the AIPPF website. Sabin thanked Brian Saunders, Anne Constantin and Camille Rochette for their support and assistance.

Han Moraal spoke about his GPEN report and stated that with the assistance from several members of the Executive Committee he succeeded in finding Board Members and editors from all regions in the world.

Han Moraal informed members that the GPEN/IAP and EUROPOL have made a special agreement that allows IAP Members to access all EUROPOL material on Cybercrime. To get access to the EUROPOL material the IAP members must contact the IAP Secretariat, who will send them a link and password.

Mohammed Hassan Abdul Rahim gave a full presentation of the programme for the Annual Conference in

Dubai in November this year.

Claire Loftus, the Director of Public Prosecutions, Ireland was invited to submit an oral bid to host the 21st Annual Conference in Dublin in 2016.

Claire Loftus proposed the following theme: "The Prosecutor and the Investigator" with a special focus on best practice in managing the relationship between the two. The suggested theme was approved.

The Executive Committee agreed to accept the bid for the 21st Annual Conference and General Meeting in Dublin, Ireland, September 2016 from 11 – 15 September 2016 and thanked Claire Loftus for the bid.

Mutembo NCHITO, reported on the 3rd IAP African and Indian Ocean Conference, which was held from 2 – 6 March 2014 in Livingstone, Zambia. (see report in Newsletter 61)

Josip Cule reported on the 14th IAP European Regional Conference in Zagreb, from 26 – 28 March 2014. (see report in this Newsletter)

The next meeting of the IAP Executive Committee will take place Saturday 22 November 2014, in Burj Arab, Dubai, United Arab Emirates.

It was agreed to accept Dr. Ali Albuaïnain's kind invitation to host the next Northern Spring Meeting of the IAP Executive Committee in 2015.

**Derk Kuipers**  
**Secretary-General IAP**

The Executive Committee of The International Association of Prosecutors agreed to recommend the following members for

#### **IAP Honorary Membership:**

- **Ye Feng**, IAP Vice-President, member of the Prosecuting Committee of the Supreme People's Procuratorate of the People's Republic of China;
- **Wendy Stephen QC**, IAP Vice-President, Crown Counsel, the Law Courts, Ministry of the Attorney-General of British Columbia, Canada;
- **Siri Frigaard**, member of the Executive Committee, Chief Public Prosecutor, National Authority for Prosecution of Organised and other Serious Crime, Norway.

#### **Announcement of Award winners:**

- **Special Achievement Award:**
- **The Prosecution Team of the Boeremag Case, composed by the advocates Mr. Paul Fick SC, Mr. Dries van Rensburg, Mr. Dr. Pieter Luyt and Ms. Phyllis Vorster;**
- **The Transitional Justice Working Group and Senior Federal Prosecutor, Raquel Dodge.**
- **Prosecutor of the Year Award:**
- **Mr. Tarjei Istad**, Senior Public Prosecutor (Norway)
- **Mr. Hans Tore Hoeviskeland**, Senior Public Prosecutor (Norway)
- **Mr Pierre Lapointe**, Directeur des poursuites crimi-

nelles et penales (Quebec, Canada)

**Mr. Daniel Azeredo**, Federal Public Prosecutor (Brazil)

#### **Certificate of Merit:**

- **The Office of the Prosecutor General of the Russian Federation**
- **The Office of the Director of Public Prosecutions in Zambia**
- **The State Attorneys Office of the Republic of Croatia**
- **The Australian Association of Crown Prosecutors**
- **Directeur des poursuites criminelles et pénales du Québec**
- **Retiring Members of the Executive Committee; Vinette Graham Allen, Lennart Lindblom and Chulasingh Vasantasingh.**

#### **Conflict Committee**

The Executive Committee agreed to recommend the following members for the Conflict Committee:

- **Mr. Joon Gyu Kim**, Korea (re-election);
- **Mr. Henk Marquart Scholtz**, The Netherlands (re-election);
- **Mr. François Falletti**, France
- **Mr. Oleksandr Shynalskyi**, Ukraine;
- **Ms. Siri Frigaard**, Norway

