

Status Report of the CGC Working Group on Voting Strengths 4/22/2026 Draft

The Constitution and Governance Committee (CGC) has been operational since early 2021, with a mandate to advise on the interpretation of, and amendments to, the IBA Constitution. In addition, as part of the 2020 IBA Strategic Plan, the CGC was tasked with assessing whether the Constitution of the International Bar Association meets the current needs of the Association and is fit for the future.

The CGC concluded its review in 2024 and submitted proposed amendments to the Constitution, which were approved at the IBA Council Meeting held in May 2025 in Milan.

Since the Council meeting in Milan, consistent with statements made during the meeting, the IBA leadership gave the CGC direction to continue and address the issues raised during consultations that the CGC had flagged for 'Special Projects'. The issues CGC was asked to look into are, broadly stated: The role of the Nominations Committee and process; Who may speak for the IBA, for IBAHRI, and the role of the BIC Policy Committee; and Voting Strengths overall. The CGC undertook this work by organizing working groups to consider each of these issues.

This memorandum is submitted by the CGC Working Group on Voting Strengths. It sets out the current voting rights under the Constitution and includes suggestions and potential options for consideration, views within the CGC and feedback received to date, at the invitation of CGC WG, from the BIC and the leadership of SPPI, *all of which are still subject to further discussion and consideration within the CGC*. Feedback from the current leadership of the LPD on relative voting strengths between the Bars and Division and Section representing the individual members s still pending.

Voting Rights Under IBA Constitution

(all terms used herein that are not otherwise defined shall have the meaning assigned thereto in the IBA Constitution and all Article references are references to the applicable Article in the IBA Constitution)

1. Eligibility for Voting:

Full Member Organisations:

Only Full Member Organisations that have paid their current year's membership fee at least 7 days prior to the IBA Council meeting are entitled to vote at that meeting (Articles 4.11). Such vote shall be cast by the Representative Councillor of the Full Member Organisation (Article 4.13.1)

Sustaining Member Organisations:

Sustaining Member Organisations are generally not eligible to vote (Article 4.9). However, where there is no Full Member Organisation from a given country, the Councillors appointed by any Sustaining Member Organisation from that country shall be entitled to vote at meetings of the IBA Council as if it were a Full Member Organisation from that country (Article 4.13.6).

LPD & SPPI Officers representing Individual Members:

LPD (by its officers: Chair, Vice-Chair, Secretary-Treasurer)

SPPI (by its officers: Chair and Vice-Chair)

Note: Individual Members are not eligible to vote and cannot attend Council meetings unless they hold certain specified roles, e.g. certain officers of LPD and SPPI (see Article 4.3).

2. Required Voting Approvals

The Chair of the Council meeting shall announce to the meeting before any vote is taken the persons entitled to vote and the votes they are entitled to cast (Article 4.13.7).

Note: Implicitly, the Chair of the Council meeting shall also specify whether the voting will be by simple or weighted voting (Article 4.13). In addition to the Chair, any Councillor may call for weighted voting (Article 4.13). Weighted voting is required for all Reserved Matters and the election of the IBA President, Vice President and Secretary General (Article 4.13).

Decisions by Simple Majority or higher (60% or 67%) Vote

Except as otherwise provided in the Constitution (see below), all decisions of the Council shall be taken by a simple majority of the Councillors entitled to vote (Article 4.8). For simple non-weighted majority voting purposes, every Representative Councillor and individual Councillor (including LPD and SPPI Officers) that is eligible to vote has one vote. In the case of an equality of votes on any matter requiring a simple majority the Chair shall have a casting vote, whether or not that person is otherwise entitled to vote on the matter (Article 4.14).

Certain voting requires higher than majority approval:

- Three-fifths (60%) for Reserved Matters (Article 4.13.5), including amendments to the Constitution that are Reserved Matters (Article 12.1.1)

- Two-thirds (66.67%) for admission of Full Members (Article 3.10), for co-option to the Council (Article 4.4.2), for amendments to the Constitution that are not Reserved Matters (Article 12.1.2.1), or the dissolution of the IBA (Article 12.1.2.2)

Note:

Simple non-weighted voting, one vote per Representative Councillor and individual Councilor, skews the balance of voting strength towards the Member Organisations. In such circumstance, the LPD and SPPI representing the Individual Members have only a total of 5 votes, while the Member Organisations typically have at least 50 bars represented at a Council meeting. Customarily, simple voting is applied to non-controversial matters.

Also, on the 60% v 66.67% voting, it seems odd that amendments to the Constitution on Reserved Matters would require a lower threshold than amendments to non-Reserved Matters.

CGC WG suggestion: In the absence of a rationale for the above-mentioned differential and given that 2/3 (66.67%) voting is the NY/US standard for super-majority voting and given that the IBA is a NY Corporations, we would suggest 66.67% voting for all matters that require a super-majority. This would not only make it consistent with NY law but would provide greater consistency and simplicity.

Note: SPPI agree with this suggestion. (SPPI input received 4/3/26]

Feedback from MB: Include practical examples in application, to demonstrate the implications of the proposal, particularly as it may/may not affect relative voting strengths

Decisions by Weighted Voting:

Matters requiring weighted voting include (Article 4.13):

Special Call, if so determined by the Chair or required by a Councillor, weighted voting may apply (Article 4.13).

Reserved Matters, including financial matters, establishment or dissolution of a Standing Committee, and certain changes to the IBA Constitution and amendments to Division bylaws (Article 1.2.45)

Election of IBA President Vice President, and Secretary General (Article 4.13.2.2)

Weighted Voting by Special Call:

- Full Members (through their Representative Councillor) have their allocated vote (Articles 4.13.1 and 4.13.6). *See Appendix* for the rules applied for allocation of votes.
- Each of the three LPD Officers have 10 votes each (Article 4.13.2)
- Each of the two SPPI Officers have 15 votes each (Article 4.13.2)

Issue for Consideration:

Allocation of votes among Full Member Organizations: During the CGC consultation process questions were raised whether the formula for allocation of votes to each Member Organisation, based on their own respective membership, still makes sense, as it may not be properly reflective of the level of engagement and contribution of individual bars in the IBA. Additionally, during consultation with MB WG, the question was raised whether the current formula is fit for modern governance purposes – why are some nations ‘worth’ more than others, regardless of paying different dues ¹

CGC WG Suggestion:

CGC to consult with BIC for their input. BIC would be well positioned to further consider this issue and its practical implications, and to provide input to CGC on possible alternative models for consideration.

Note: .

BIC Officers “have not had any meaningful discussion as of yet on the issue of voting weight among the Bars themselves.” and expect to bring this forward the next time the Officers meet.”

SPPI agree ‘that the BIC is best placed to give a recommendation . . .after consultation with Member Organisations.’

Weighted Voting for Reserved Matters:

- Full Members (through their Representative Councillors) have their allocated votes (Articles 4.13.1 and 4.13.6)

¹ Membership numbers of a Member Organisation are also used to set the IBA dues for the Member Organisation.

- LPD & SPPI Officers have between them the number of votes equal to the aggregate votes of the Full Members so that the allocation of votes between Full Members and LPD & SPPI is equally split (Article 4.13.2.1)
- The senior LPD & SPPI Officers cast the votes (Article 4.13.4)
 - LPD casts 85% of the allocated votes
 - SPPI casts 15% of the allocated votes

Note: It is our understanding that the allocation of voting strength for Reserved Matters, which include voting on financial matters, between the Bars and the Division and Section representing the Individual Members was put in place about 20 years ago, in recognition of the financial contribution by the activities of the Individual Members, particularly the contribution of the LPD to the financial strength of the IBA

SPPI, have provided the following comment regarding the allocation of votes among LPD and SPPI:

“Whilst acknowledging and appreciating the importance of the LPD's contribution to the financial strength of the IBA, the role of the SPPI and the importance of the softer law issues it deals with justifies a reconsideration of this allocation. The importance of issues relating to the Rule of Law as well as the other building blocks on which the LPD rests, such as Academic & Professional Development, Law Firm Management, Young Lawyers, etc have become more evident. This was thrown into high relief by the findings of the Impact Project assessing the perceived impact of the legal profession. In addition, the SPPI has found a new lease of life and is more active now than at any time in the past. I would propose an adjustment to a 60:40 allocation in favour of the LPD.”

LPD position:

"While we understand the importance of the softer law issues that SPPI deals with and while we do appreciate that SPPI has found a new lease of life and it is more active, we would be remiss in not pointing out that many of the softer law issues have been just as important to LPD and are also being dealt with by the 18 Sections, 50 Committees, 6 Regional Fora and the Corporate Counsel Forum. Also while SPPI has moved forward, LPD has not stood still and if anything has accelerated its growth through more than 50 specialist conference and over 200 sessions during the Annual Conference. LPD has and continues to be the main engine of the IBA and as such would not be in favor of any adjustment to the 85%/15% allocation."

Weighted Voting for IBA President, Vice President, and Secretary General

- Full Members (through their Representative Member) have their allocated votes (Articles 4.13.1 and 4.13.6)
- LPD/SPPI Officers have between them the number of votes equal to 40% of the aggregate votes of the Full Members (Article 4.13.2.2)
- The senior LPD/SPPI Officer casts the vote (Article 4.13.4)
 - LPD casts 85% of the allocated votes
 - SPPI casts 15% of the allocated votes

Issue for Consideration:

Voting allocation between the Bars and the Division and Section representing Individual Members.

The practical impact of the voting allocation between the Bars and the Division and Section representing the Individual Members for the election of IBA Officers means that the Bars acting collectively, have the power to disenfranchise the individual members represented by the LPD and SPPI.

It is our understanding that this voting allocation was put in place almost 50 years ago (circa 1976), not long after the IBA opened membership to Individual Members. Considering the current composition of the IBA overall, the growth in Individual Members of the LPD and SPPI and their collective contribution to the strength and breadth of the activities of the IBA question whether voting allocation set out 50 years ago still makes sense and whether appropriate recognition and representation of the voice of Individual Members calls for a rebalance. A current snapshot of the annual financial contribution of the activities of the Individual Members, as at June 2025, is attached.²

A proposed option for consideration: While the IBA has adjusted certain relative voting strengths as it has evolved from an association of Bars /Law Societies only to an association that includes Individual Members, this voting allocation put in place 50 years ago does not seem to adequately reflect the current composition of the organization as a whole and the contribution of the Individual Members to the growth and viability of the IBA. It seems to us that, premised on the principle of mutual respect and appropriate recognition of their respective contributions, a 50/50 allocation between the Bars and the Division and Section representing the Individual Members, as is already in place for voting on Reserved Matters, would be more balanced. The contributions from the activities of the Individual Members enhance the platform for the amplification of the voice of the Bars. Correspondingly, the membership and voice of the Bars

² Source: Financial Report presented to IBA Council at 2025 Annual Meeting in Toronto.

spanning more than XXX countries adds to the unique status and credibility of the IBA as the voice of the legal profession.

The members of the CGC WG on the Role of the Nominations Committee have since taken the alternative view that changing the current voting balance is not warranted as “the voting rules for the election of IBA Officers by Council are the result of a good faith attempt to fairly balance the voting powers of Divisions and Member Organizations’, that it is ‘not inherently unfair that a candidate for a position as IBA Officer can win an election in Council even if his or her opponent has the support of both Divisions’, and “it would not reflect a fair balance if candidates supported by Member Organizations could become IBA Officers at the mercy of the Divisions only”.

This still begs the question whether the current 60/40 voting allocation, where a candidate supported by the Divisions could become IBA Officers at the mercy of the Member Organizations, reflects a fair balance, and whether a 50/50 allocation, whereby all candidates would need support from both Member Organizations and Divisions, could be more balanced considering the composition of the organization today. In assessing the differing positions, it will be necessary to consider recent voting history in elections for IBA Leadership (including among the divisions and Member Organizations)

In response to CGC's invitation for comments, the **BIC** officers have submitted their unanimous view (understanding that they do not speak for the Bar members) that the current voting allocation between the divisions should not change. The BIC “are not persuaded that changing the voting balance [50/50 in the way described above] would (i) be more equitable, (ii) properly reflect the respective contributions of the divisions given the variety of ways this might be measured (where calculating financial contributions would merit being open for further scrutiny and balance with other non-monetary contributions), or (iii) align with the mission and core purpose of the IBA. The group does not agree with the characterization in the draft memo of the current constitutional balance as having the “practical impact ... that the Bars acting collectively, have the power to disenfranchise the individual members represented by the LPD and SPPI.” The BIC Officers have expressed concerns that the implementation of the proposed change would, on the contrary, reduce the franchise of the Bars, the implications of which merit further scrutiny and discussion.” (4/6/26 e-mail from Jonathan Herman)

On the proposed option for rebalancing the current 60/40 voting, **SPPI** has expressed their ‘doubt that the Member Organizations will be favourably disposed to or will willingly vote for a reduction in their influence.’ Current **LPD** leadership has not yet weighed in on this proposal.

The questions and views set out here are still subject to further discussion and alignment within the CGC.

Since the IBA leadership requested CGC to examine the Voting Strengths issue during this second phase of our work, we consider it necessary not only to outline the current state, but also to suggest, based on CGC's independent judgment, option (s) for presentation to the IBA Council's consideration. We hope to be able to do so, after we have received and considered the input from all the constituents.

Additional suggestion for consideration: If there is agreement that voting with a 50/50 allocation as set out above is appropriate for all instances of weighted voting, then in the interest of consistency on the principle of balance and of simplicity, we should consider suggesting that all voting be conducted as weighted voting.

SPPI view on this suggestion, as set out in their feedback as follows:

"Given the relative complexity of the weighted voting process, with the complicated calculations necessary to determine the number of votes each Member Organization can cast and then derive from that the number of votes the LPD and SPPI can cast, [we] would recommend that we retain simple majority voting for non-reserved and non-election related matters".

Appendix

Rules for allocating votes to Full Member Organisations

Full Member Organisations are allocated votes by the Credentials Committee at the time of their admission, applying the rules for allocation of votes set out below.

Votes within the IBA (For Full Member Organisations only) • 1 vote for every 1,000 members.

- Membership numbers are rounded down to the nearest thousand.
 - Example:
 - 999 members = 1 vote
 - 1,000 members = 1 vote
 - 1,001 members = 2 votes
- Maximum of 10 votes per organisation (even if the membership is larger).
- Maximum of 20 votes per country (total across all organisations in that country).

Examples

- Organisation A has 999 members = 1 vote
- Organisation B has 1,001 members = 2 votes
- Organisation C has 12,000 members = 10 votes
- If these three organisations are all from the same country, their combined votes = $1 + 2 + 10 = 13$ votes (under the 20-vote country limit, so allowed).

If the total for a country is above 20, the votes are reduced proportionally so the country cannot exceed the limit.

Membership numbers of a Member Organisation are also used to set the IBA dues for the Member Organisation.

**Memorandum
of the CGC Working Group on
The Role of the Nominations Committee**

dated 26 March 2026 (with clarification edits by DER on MB WG feedback)

1. Introduction

The Constitution and Governance Committee (**CGC**) was charged with a review of the rules for and the functioning of the Nominations Committee.

As a matter of course, the CGC is dealing primarily with constitutional oversight and regulatory interpretation. In this instance, the CGC is tasked as governance advisory and promotor of institutional reform.

The CGC based its work on this report on comments on the Nominations Committee's past work and suggestions for changes to its rules and operations, both proffered informally by individuals in the course of the constitutional reform process which has been conducted over the past few years. Initially, the CGC did not receive formal requests from Council or Management Board to comment on specific reform proposals.

The absence of any limitation to the CGC as to the direction(s) of its investigations would have required all-encompassing reflections on possible alternatives for the Nominations Committee's future role and functioning, most such reflections having a bearing on other features of the Association which might be worth rethinking as well.

The very tight deadline imposed has limited the CGC's endeavors to looking into a limited number of alternatives to the status quo and has neither permitted out of the box thinking and reflections on creative alternative ways to identify the best possible candidates for the offices upon the filling of which the Nominations Committee is tasked to assist nor on the manner in which findings to such effect should best be submitted to the electorate.

Furthermore, in an effort to get as much insights and input as possible, the CGC also contacted the current chair of the Nominations Committee, Michael Greene, to discuss views and exchange thoughts. It transpired that he was also charged last autumn in Toronto to conduct a similar review on the functioning of the Nominations Committee. As his analysis was not finalized (it is due for the Mid-Year Meetings this year), he was reluctant to share any views.

Finally, at the request of the Management Board, the CGC submitted in mid-February a first draft of this memorandum dated 17 February 2026 to the working group established by the Management Board for dealing with the constitutional special projects (**Management Board Working Group**). Upon a first read of the memorandum, the Management Board Working Group informed the CGC that their discussion included the possibility that the CGC could either recommend either no changes, or if changes are needed, specific proposals, which could involve governance improvements or constitutional changes.

Also, in a meeting of 5 March 2026 between Ulrikke Krogbeck and Sylvia Khatcherian as CGC Co-Chairs on the one hand and the Secretary General Deborah Enix-Ross as representative of the Management Board Working Group on the other hand the

Management Board Working Group communicated quite specific suggestions with respect to the rules and the functioning of the Nominations Committee as follows:

"4. Nominations Committee Paper

The discussion highlighted views within the working group that if the **Nominations Committee opted for a binding process, then the recommendation should be subject to the approval or rejection and remand by Council.**

At the same time, it was considered important to adjust the **composition of the Nominations Committee** to include **at-large seats**, allowing candidates to run openly for those positions.

The principle is as follows:

- The **Nominations Committee submits one binding candidate to Council.**
- If **Council does not support the candidate**, it may **remand the decision.**
- In such cases, the **Nominations Committee must reconvene and restart the nomination process.**

In addition, **clear rules on campaigning** should be established so that candidates understand the framework within which they may present themselves."

(extract from the CGC meeting minutes)

The CGC identifies three inputs (binding character of recommendations, composition to include at-large seats, and rules on campaigning) and will discuss those separately in the following Sections on the relevant subject matter.

2. Definitions

All terms used herein that are not otherwise defined shall have the meaning assigned thereto in the Constitution of the International Bar Association (**IBA Constitution**) and all Article references are references to the applicable Article(s) in the IBA Constitution (Article(s)).

3. The Nominations Committee Under the Current Constituting Documents

3.1 IBA Constitution

3.1.1 Foundational Purpose and Core Values

The Nominations Committee is a Standing Committee established to assist in the governance of the Association (Article 4.2.5). Its operation is situated within the IBA's core purposes, which include promoting the administration of justice under the rule of law and maintaining relations between bar associations and legal professionals worldwide (Articles 1.2.1, 1.2.6).

3.1.2 Composition and Appointment of Members

The Committee consists of 12 persons (Article 8.3). The President appoints four members, including the chair, who is normally the most recently retired President (Article 8.3.1). The Chair of the LPD appoints four members (Article 8.3.2), while the Chairs of the BIC and SPPI each appoint two members (Articles 8.3.3 and 8.3.4). While the IBA Diversity and Inclusion Policy applies generally, in order to be appointed, individual members do not have to fulfill pre-defined eligibility requirements with respect to suitability, experience, and availability. However, all appointments are subject to ratification by the Council and the respective Constituents (Articles 8.3.1 - 8.3.4).

3.1.3 Primary Duties and Constituent Veto Powers

The primary duty of the Nominations Committee is to make recommendations for the best candidates for election as the next officers of the Association, LPD, BIC, and SPPI (Article 8.4). To protect the interests of specific Constituents, certain recommendations require minimum support levels from that Constituent's representatives on the Committee (Article 8.4) as follows:

- a. A recommendation for an LPD chair, vice-chair, secretary-treasurer or assistant treasurer position is only valid if at least three of the four LPD-appointed Committee members are in favor (Article 8.4.1).
- b. Recommendations for the chair or vice-chair of the BIC or SPPI require the support of at least one of their respective two appointees (Articles 8.4.2 and 8.4.3).

3.2 IBA Nominations and Election Bylaws

3.2.1 Meeting Protocols and Decision-Making Mechanics

The Committee is required to meet as soon as possible after its appointment, with the Chair determining the time, place, and manner of such meetings, which may include in-person, videoconference, or telephone sessions (Bylaws Sections 1.1, 1.5). While the Chair generally directs the schedule, a meeting must be convened if a majority of the Committee members request it (Bylaws Section 1.3).

Decisions or reports may be formally agreed upon without a meeting if they are confirmed in writing by a super-majority consisting of 75% of the members appointed by the President, 75% of those appointed by the LPD Chair, and at least one member each from the BIC and SPPI (Bylaws Section 1.6). Additionally:

- a. LPD Leadership: Recommendations for the Chair, Vice-Chair, Secretary-Treasurer, or Assistant Treasurer of the LPD require approval from at least 75% of the Committee members appointed by the LPD Chair.
- b. SPPI Leadership: Recommendations for the SPPI Chair or Secretary-Treasurer must be approved by one member of the Committee appointed by the SPPI Council.

- c. BIC Leadership: Recommendations for the BIC Chair or Vice-Chair (Principal BIC Officers) are only valid with the approval of one member of the Committee appointed by the BIC Chair (Bylaws Section 1.7).

In case of a deadlock, the Chair or in his/her absence, such other person chairing the meeting, has a casting vote (Bylaws Section 1.9).

3.2.2 Nomination Deadlines and Candidate Vetting Procedures

The timeline for nominations requires that submissions for Association and Constituent officers be made within 45 days of the last day of the Annual Council meeting in the year preceding the elections (Bylaws Section 2.1). The formal call for nominations is initiated by the Committee through written notice to all Member Organisations, Councillors, Association and Division Officers, and Committee officers, clearly stating the applicable deadline. This notice is distributed electronically and must also be provided to the broader membership by posting the call for nominations directly on the Association's website (Bylaws Section 2.2).

The requirements for a valid nomination are as follows (Bylaws Section 2.3):

- a. Association-wide leadership (President, Vice President, or Secretary General) requires support from two individuals who are either IBA Officers, Councillors, or Member Organisation representatives, excluding the current incumbents of those specific roles.
- b. For LPD and SPPI leadership, candidates must be nominated by either two IBA officers/council members (excluding incumbents) or by twenty-five Individual Members of that specific Division or Section.
- c. Principal BIC Officers require the support of two Member Organisation representatives, excluding the current BIC incumbents.
- d. These nominations may be supplemented by letters of support from any IBA officer or councilor across the various constituents.

The Committee may, on its own initiative, nominate Individual Members for consideration up until the date of the election (Bylaws Section 2.4). It also has the authority to interview candidates and seek additional information regarding their suitability, experience, and availability, though it is not strictly obliged to do so (Bylaws Section 2.5). Individual Members are restricted to being nominated for only one position (Bylaws Section 2.7). Candidates retain the right to withdraw their nomination at any time by providing written notice to the Chair (Bylaws Section 2.8).

3.2.3 Reports and Recommendations

At the Mid-Year conference, the Committee reports the names of validly nominated candidates to the Council for discussion purposes only, during which time the nominees themselves are prohibited from being present (Bylaws Section 3.1). The final report of recommendations must be delivered to the Secretary-General within 30 days of the Mid-

Year Council Meeting (Bylaws Section 4.1). These reports are required to include the names of all nominees, the identity of their nominators, the Committee's specific recommendations, and certification that all recommendations comply with the requirements of the Constitution (Bylaws Section 4.2). Following the presentation of the report, the Association Council or the relevant constituent councils may seek clarification from the Committee on its findings, provided such inquiries do not compromise the mandatory confidentiality of the Committee's deliberations (Bylaws Section 4.3). The relevant report is posted on the Association's website and the Council and Constituents are notified (Bylaws Section 4.4).

3.2.4 Confidentiality and Conflict of Interest

Strict confidentiality and conflict of interest rules govern all aspects of the Committee's work. All deliberations, including written and oral presentations, must remain confidential (Bylaws Section 1.8). Furthermore, no member of the Nominations Committee is eligible for nomination to any office for which the Committee makes recommendations during their term, a restriction that remains in place even if a member resigns from the Committee (Bylaws Section 2.6).

3.2.5 Renomination Safeguards and Thresholds

Should a candidate be validly nominated but not recommended by the Committee, they may only remain eligible for election through a formal renomination process (Bylaws Section 5.1). This process requires a significantly higher threshold of support within 30 days of the notification of the Chair of the Committee to the non-recommended Individual Members; for Association-wide offices, this entails support from ten persons who must be IBA Officers, Councillors, or Member Organisations (Bylaws Section 5.1.a). LPD and SPPI candidates require ten eligible officers or fifty Individual Members from their respective Division or Section, while BIC candidates require ten Member Organisations (Bylaws Sections 5.1.b - 5.1.d), with all incumbents excluded respectively.

3.2.6 Secret Ballot and Voting Outcomes

All elections are conducted by secret ballot (Bylaws Rules Section 2.1). When there are more than two candidates for an office, a candidate is declared elected if they receive more than 50% of the votes cast, which includes abstaining and invalid votes (Bylaws Rules Section 2.3). In the event that no candidate achieves this majority, a second round of elections is held between the two candidates who received the highest number of votes (Bylaws Rules Section 2.3).

Elections may be conducted through electronic ballot solicitation, which must be held open for at least 20 calendar days and requires a minimum 20-day notice period to all Councillors and Member Organisations (Bylaws Rules Sections 3.1, 3.2). If a second round of electronic voting is necessary, results must be announced within ten days, followed by a minimum 15-day notice period, and the second round must remain open for

at least ten calendar days (Bylaws Rules Section 3.3). While proxy voting is permitted at in-person meetings, there is no voting by proxy allowed during elections conducted via electronic ballot solicitation (Bylaws Rules Section 3.4).

Candidates are permitted to appoint a scrutineer to observe the counting process, provided the scrutineer does not disclose how any specific Member voted (Bylaws Rules Sections 5.1, 5.2).

The results of each election must be posted on the Association's website no later than 30 days following the election (Bylaws Rules Section 6.1).

3.2.7 No Invalidity by Reason of Inadvertent Non-Compliance

No election and no part of the election or nominations process shall be invalidated by reason of inadvertent non-compliance with any of the provisions of these by-laws and rules (Bylaws Rules Section 7.2).

3.3 Candidate Quality Criteria

3.3.1 IBA Contribution and Professional Vision

Candidate quality is assessed against specific criteria including "IBA Contribution," which looks for comprehensive experience, leadership success, a clear vision for the organization's future, and the ability to collaborate with all constituents. Candidates must demonstrate "Professional Perspective and Standing" showing respect for the rule of law, the independence of the judiciary, and the role of bar associations worldwide, and be a respected member of the profession with relevant experience in leadership positions.

3.3.2 Personal Qualities and Ambassadorship

Essential "Personal Qualities" include integrity, courage, and strength, as well as diplomacy and the ability to mediate conflicting views. The Committee also evaluates communication skills, accountability, and the candidate's ability to act as a strong ambassador for the IBA (Quality Criteria).

3.3.3 Weighing of the Criteria

No single criterion is determinative; the Committee considers how well each candidate demonstrates these qualities overall in view of the position in question.

The working group will analyze the historic events/elections in the past few years to identify the root cause(s) for the recent criticism on the Nominations process received on the occasion of the Constitution consultations.

4. Points of Criticism from the Consultation

The CGC conducted several consultations ahead of the amendment of the IBA Constitution in order to develop an understanding for the perceived areas of concern. Certain points of criticism were raised also with respect to the Nominations Committee. For instance, the CGC report on the Paris consultations of 6 March 2024 stated:

- "disagreement was expressed on the (main) tasks, composition, and role of the Nominations Committee (NC). Some participants felt that the existing discussion around the NC can perhaps be resolved by establishing a separate and independent Credentials Committee
- some felt that certain bodies like the Nominations Committee (without going into detail) may have too much "power"; others indicated that there is no reason to change the composition and mandate of the NC"

In the course of the IBA Constitution consultation process, the following main points of criticism emerged:

- **Composition:** While the relative allocation of nomination rights to the Nominations Committee among the LPD, SPPI and BIC were seldom mentioned as problematic (but could also be second-guessed), several times the President's right to appoint one third of the members (including its chairperson) was mentioned as an area of concern.
- **Upgrade of Recommendations:** Some claimed that as the Nominations Committee is putting a lot of resources and efforts in the evaluation process, much more than the average Council member, the Nominations Committee is better suited than the Council to decide who is the best candidate for a particular IBA role. Therefore, the recommendation of the Nominations Committee should be binding and Renominations either impossible or at least made much harder.
- **Transform its Role into a Credentials Function:** In light of the fact that the Council deviated several times from the recommendations of the Nominations Committee and elected a renominated candidate to office, it is a waste of resources if the Nominations Committee tries to assess who is the best candidate. Therefore, in order to align its mission to reality, the role of the Nominations Committee should be transformed into a pure credentials function, leaving the Nominations Committee to only determine whether a candidate is suitable, i.e. meets the mandatory criteria for election. Out of the suitable candidates, it is then the Council, which decides which is the best candidate.

The CGC will analyze those three areas of concern in the following.

5. Analysis

5.1 Composition

With respect to the composition of the Nominations Committee, the CGC recognizes distributed institutional appointment power. Multiple institutional constituencies are embedded and no single appointing institution controls a majority.

Each appointing authority's selections are ratified by its respective governing body. This is particularly important for the appointments by the President, as this reduces unilateral patronage risk, enhances transparency, and adds collective accountability. From what the CGC heard in the process of the Constitution project, such ratifications by the Council were not regularly made in the recent past. As pointed out above, this ratification is important and needs to be adhered to. Furthermore, in order to contribute to the governance architecture, the ratification needs to be meaningful and not merely formal. While giving deference to the appointing institution, it must be ensured that the ratifying body can realistically reject nominees. This is particularly important as there are - other than the IBA Diversity and Inclusion Policy, which applies generally within the IBA - no pre-defined individual eligibility requirements with respect to such member's suitability, experience, and availability. Prompted by the feedback from the Management Board Working Group on the Nominations Committee's composition, the CGC rediscussed the issue that no eligibility rules exist for that position. Although it seems to be clear to everyone that only IBA Members shall be eligible to that task, it is stated nowhere. Therefore, the CGC proposes to draft and promulgate pre-defined individual eligibility requirements either as a stand-alone paper or as part of a larger Policy Statement (see hereinafter).

Finally, the CGC notes one subtle governance issue: The chair of the Nominations Committee is designated by the President and it is normally the most recently retired President. This has both strengths and risks. Among the appointing institutions, the President is from a Constituent perspective quasi neutral (although the President will inevitably have a history with one of those Constituencies).

While appointing the former President as chair of the Nominations Committee can have strengths (institutional memory, experience, continuity, reduced short-term political pressure), there are also risks (leadership self-replication, cultural entrenchment, reduced contestability).

In corporate governance, nomination committees are usually chaired by an independent director. A recently retired President would not be considered independent in listed-company terms — but nonprofit governance is different. The IBA Constitution favours continuity and trusts the immediate past President with this; after all, elected by the Council she or he just served two years in the most important role within the Association. Therefore, the IBA Constitution provides that the chair of the Nominations Committee shall normally be the most recently retired President. Interestingly, however, if it is not the most recently retired President, there is no eligibility requirement, limitation or guidance as to whom the President shall appoint (and whom the Council shall ratify) into what some refer to as the second most important role within the Association.

In the 5 March 2026 meeting, the Management Board Working Group underlined that it considered it to be important to adjust the **composition of the Nominations Committee** to include **at-large seats**, allowing candidates to run openly for those positions.

The CGC considers this to be an interesting idea, worth further thought and discussion. Here is the CGC's preliminary assessment:

The Management Board Working Group did not specify how many at-large-seats there should be and whether these at-large seats should be added to the current set-up by increasing the number of its members from 12 to, let's say 15 or 16, or whether those at-large seats should reduce the current number of appointments an appointing authority can make.

While the CGC appreciates that 12 members seem to be ideal for a committee with the role of the Nominations Committee and its requirements of Constituent representation, it is certainly harder to take away seats from the appointing authorities than to simply enlarge the committee. Therefore, in order to allow for that, it is conceivable – and possibly easier to implement - to increase the number of members.

If, however, the number shall not be increased, as those appointing rights are in a relative balance, a reduction for instance of the BIC or SPPI representative portion should also be mirrored in a reduction of the LPD and the President allocation. Consequently, the composition could be minus one for every appointing authority, i.e. three for the President, three for the LPD, one for the BIC, one for the SPPI, and three or four at-large seats.

One argument against introducing at-large seats could be that whoever runs for those seats, is inevitably also a member of a Constituent. Worst case scenario would be that one Constituent could be heavily campaigning for those at-large seats while the others remain passive and as a consequence all at-large seats are taken by that one Constituent, effectively dislodging the balance of representation. In the opinion of the CGC, that risk does not warrant to exclude at-large seats altogether, rather the number of at-large seats should be limited (not more than three or at the most four) and rules on campaigning could also address certain concerns.

Last but not least, the CGC would like to draw the attention also to the fact that, irrespective of the details of the reform, in case at-large seats in the Nominations Committee are introduced in whatever shape or form, the candidacy and election process (including its timing) must be well defined in order to ensure the Nominations Committee's functioning from day one, because other than appointments with subsequent ratifications by Council, these seats can only be filled with an election, and therefore a decision, by Council. The logistical challenges are not insurmountable, and therefore not an argument against such at-large seats, but they are also not trivial and should not be underestimated.

This being said, the CGC would like to make a proposal that combines two ideas: Instead of introducing at-large seats, the Constitution could be amended to give the President the task to make sure that with his/her three appointed members (in addition to the former President) all "interest groups" within the IBA (Constituents, Officers, Organizational Members, Individual Members and Group Members) are accurately represented. This would give guidance to the President and reinforce the goal of the President's allocation,

while avoiding the complexities of increasing the number of members or reducing/readjusting the number of appointment rights, and the logistical challenges of elections for an at-large position as member of the Nominations Committee.

5.2 Alternative Proposals

The following is an analysis discussing three proposals made as to the future operations of the Nominations Committee:

- a. to make nominations of the Nominations Committee binding or renominations (materially) more difficult; or
- b. transform the Nominations Committee's role into a credentials function with additional new tasks;
- c. Maintain the Nominations Committee in its existing form operating under the guidance of a Policy Statement that describes the key principles to be applied by the Nominations Committee in the discharge of its duties (enhanced status quo).

5.3 Make Nominations Binding or Renominations (Materially) More Difficult

5.3.1 Make Nominations Binding

In early March the CGC had been informed that there are strong views within the Management Board Working Group that the Nominations Committee should recommend a candidate, and the recommendation should be binding, subject only to the approval or rejection and remand by Council. The CGC took this input as an opportunity to re-discuss this aspect. However, the CGC came to the same conclusion as follows:

Making nominations of the Nominations Committee binding would in essence mean to transfer the right to vote for officers of the Association (**IBA Officers**) from Council to the members of the Nominations Committee (this memorandum does not address elections by Council other than those for IBA Officers). Apart from the aspect that it can be ruled out that such a proposal could find the necessary majority in Council, it would require a composition of the Nominations Committee making sure that its members exclusively pursue the only legitimate purpose of the Nominations Committee, i.e. to identify the best candidates for the offices to be filled (Article 8.2. of the IBA Constitution reads: "*The Nominations Committee shall make recommendations to the Council, to the councils of the LPD and the SPPI, and to the officers of the BIC, respectively, as to the best candidates for election as the next officers of the Association, LPD, BIC and SPPI, but so that: (...)*").

In reality, based on the experience of former members of the Nominations Committee, at least some members of the Nominations Committee seem to have been understanding their task primarily in promoting those candidates who were nominated with the support of the IBA Constituency which nominated the respective Nominations Committee member to the Nominations Committee. In addition, past Nominations Committee members report that they were approached by persons who tried to influence their behaviour as

Nominations Committee members by asking them to exercise their votes within the Nominations Committee to support certain candidates as opposed to others.

Therefore, the CGC proposes two measures:

First, either in Article 8 of the Constitution, or in a separate document describing the role of the members of the Nominations Committee, or at least in the IBA Nominations and Election Bylaws, the following shall be stated: The members of the Nominations Committee - regardless of how they were appointed - owe primary fiduciary duties to the Association itself, not to the authority who nominated them. A member of the Nominations Committee must act in the best interests of the Association as a whole. Even if delegated by a Constituent or the President, they must not at any time prioritize that Constituent's or the President's interests over the Association's.

Second, in enhanced rules on campaigning it shall be regulated in more detail what kind of campaigning is legitimate and what is not, in particular also vis-à-vis members of the Nominations Committee.

One can be of different opinions whether the current voting mechanism and voting allocation in the Constitution is simple enough, transparent enough and in essence appropriate or not (see Voting Allocation Paper for a discussion of this). Fact is, however, that the Constitution is aiming at balancing the various interests involved in a very detailed way. Consequently, irrespective of the substance of the voting allocation, it is hard to imagine how a Nominations Committee made up of 12 (or, for that matter, 15 or 16) members could be structured as to membership to provide for an equally balanced allocation of power among Divisions and Member Organisations as provide the present rules on the composition of Council and the voting rules pursuant to Article 4.13.2 of the IBA Constitution. This dilemma is aggravated by the perception that nomination for Nominations Committee membership seems to implicate the expectation of the nominating entity of loyalty on the part of its Nominations Committee member nominees to the extent the nominating entity supports certain candidates for IBA Officer positions.

The CGC therefore is clearly of the opinion that the recommendations of the Nominations Committee shall not be binding, that it shall be made clear in an appropriate form that the members of the Nominations Committee owe their primary fiduciary duties to the Association itself, not to the authority who nominated them, and in enhanced rules on campaigning it shall be regulated in more detail, what kind of campaigning is legitimate and what is not, in particular also vis-à-vis members of the Nominations Committee.

5.3.2 Making Renominations More Difficult

The CGC considers the possibility to make renominations to be an important part of the design of the nomination process. Should the Nominations Committee unduly restrict the choice of the candidates available for election by the Council, the renomination is a corrective, ensuring that the election power remains with the Council. This preserves

electoral legitimacy. Consequently, the CGC is of the opinion that the renomination process must remain.

Tightening the rules for renomination would only address the concerns of the critics if it effectively prevented certain candidates from achieving renomination. In the opinion of the CGC, preventing candidates from de facto obtaining renomination has a similar effect as making nominations by the Nominations Committee binding. Consequently, the above arguments are also valid with respect to making renominations (materially) more difficult.

Finally, regularly the argument is made that the opportunity of renomination favours candidates personally more affluent because only they could afford to go through a renominations process. First of all, this opening statement/argument is doubtful in today's world, as modern communication technology no longer requires candidates seeking renomination to travel the world. Video-conferencing reduces such cost in money and time materially. Secondly, the CGC recognizes the importance of the renomination process. Making the renomination process more difficult would not address the purported deficit, as it would not help less affluent candidates to run for renomination. Rather, it would weaken the corrective effect of the process as it would hinder also more affluent candidates to obtain renomination and run against the candidate(s) pre-selected by the Nominations Committee.

5.4 Transform the Nominations Committee's Role into a Credentials Function

Nothing in the present IBA Nominations and Election Bylaws (**Nominations Committee By-Laws**) prevents the Nominations Committee from nominating more than one candidate. Its Section 2.4 reads "*The Committee may, on its own initiative, nominate one or more Individual Members for consideration for election, provided the person or persons so nominated are nominated in accordance with Article 8.2 of the IBA Constitution*". Article 8.2 of the IBA Constitution also refers to "candidates" in the plural and does not speak of one candidate per IBA Officer position. It just prevents nomination of candidates for certain LPD, BIC and SPPI offices if there is substantial opposition against such candidates on the part of the Nominations Committee members nominated to the Nominations Committee by the respective Division or the BIC.

In fact, the Nominations Committee did nominate more than one candidate for one office at past occasions and that neither led to irritation nor confusion among those having a vote in Council nor did it have any other adverse consequence. The decision to nominate one candidate only per office was – at least in the recollection of those authors of this memorandum, who served on the Nominations Committee – the preference of the respective chair of the Nominations Committee without much further reasoning. In the end those persons with a right to vote in Council are all more than qualified to make up their minds about the candidates. What benefit is derived from deciding for one candidate if, as happened in the past, there are two or more equally suited candidates, their only difference being the sponsors of their candidacy?

Fortunately, the IBA has had quite a number of candidates for each and every office for which elections are held in Council at all times and will foreseeably have so in the future. However, every person with aspirations to become an IBA Officer has a window of opportunity and has a chance to be successful during such window only. Accordingly, not all persons who would be suited to serve as IBA Officer can actually do so. There are just too many excellent personalities and a limited number of offices only.

Now and then the idea of striking deals has surfaced: One candidate should step back in favour of another in respect of an upcoming election in return for the promise of receiving support of the sponsor(s) of the latter candidate at the one two years later. Apart from the fact that such deals could have negative effects for the organisation in general, they go against the dynamics of an organisation like the IBA. New brilliant persons emerge regularly and blocking their path by deals like the one described may slow down the introduction of young blood into the Association and seems just not right.

Finally, the argument is made that, over times, each Division and the Member Organisations should have an equitable share in IBA Officer positions, per se not an unreasonable proposition. However, this principle is not written down anywhere even not as an aspiration. Fair agreements of all major players on candidates for IBA Officer positions avoiding contested elections may lead to such equitable sharing of positions. On the other hand, they are prone to amount to deals as described above which are suited to discourage the engagement of ambitious rising stars within the Association.

This memorandum holds the view that all candidates aspiring to serve as IBA Officers should have the opportunity to run for office if properly nominated and that there should be no mechanism to exclude persons from running or make it difficult for them.

The Nominations Committee should review all candidacies, interview the candidates and report on them, both in a standardized and open manner. In its communications to the public, the Nominations Committee should set out strengths and weaknesses and if a strong majority favours one candidate over another it may issue a recommendation.

This appears the best and fairest way to have the best candidates win elections rather than those pushed by influential nominators.

This memorandum suggests in addition to give the Nominations Committee a more proactive role and task:

At present the Nominations Committee operates reactively only. It reviews the nominations that are submitted to it although in theory it could, in accordance with the above quoted Section 2.4, nominate candidates on its own initiative as well. Should that have ever happened, the authors of this memorandum, who served on the Nominations Committee in the past, do not know about any such nomination.

It is proposed that the Nominations Committee become a more institutionalized body (not just operating in varying compositions from election to election) but a body which

proactively looks at potential candidates for IBA Officer positions way before they have risen up the ranks as expected from candidates for IBA Officer positions. This would entail involving Nominations Committee members appropriately into the dealings of the Divisions, the BIC, the IBAHRI and Council meetings. By becoming proactive in such a manner, it might contribute to forming an informal pool of ambitious stars rising up the ranks of the Association from which candidates for IBA Officer positions could be drawn.

This proposal will not avoid that candidates suited to and aspiring to become IBA Officers will not manage to obtain such position but would create a transparent level playing field for all candidates irrelevant of those that may have nominated them.

5.5 Enhanced Status Quo

The Nominations Committee would operate in accordance with its existing rules augmented by a Policy Statement that would incorporate the IBA Nominations Committee Candidate Quality Criteria, the IBA Diversity and Inclusion Policy and any other significant criteria that needs the Nomination Committee's focus such as geography or professional practice areas as well as possibly rules regarding individual eligibility requirements with respect to such member's suitability, experience, and availability.

This would create on the one hand enhanced guidance for the chair and the members of the Nominations Committee themselves and on the other hand more clarity and transparency for the rest of the IBA.

In addition, a rule could be implemented that in case of competing candidacies a higher majority needs to be reached in order to issue a recommendation in favour of one candidate. It does not seem to be appropriate that such an important decision can be taken with the decisive vote of the chairperson. Alternatively, and as a minor measure the Nominations Committee could be obliged to disclose the result

6. Recommendations

For the reasons set out in this memorandum, the CGC proposes the following:

- a. Although the CGC considers the idea of at-large seats in the Nominations Committee worth further thought and discussion, it proposes to stick to the current composition.
- b. Instead of introducing at-large seats, the Constitution shall be amended to give the President the task to make sure that with his/her three appointed members (in addition to the former President) all "interest groups" within the IBA (Constituencies, Officers, Organizational Members, Individual Members and Group Members) are accurately represented.
- c. Pre-defined individual eligibility requirements for the position of member of the Nominations Committee shall be drafted and promulgated by Council either stand-alone or in a Policy Statement.

- d. No change is needed with respect to the nomination and renomination process itself. In particular, the recommendation of the Nominations Committee shall not be binding and the renomination process shall not be made more difficult.
 - e. The only change in the process proposed by the CGC that could be implemented is a rule that in case of competing candidacies a higher majority needs to be reached in order to issue a recommendation in favour of one candidate.
 - f. It shall be set forth in appropriate form (in Article 8 of the Constitution, or in a Policy Statement describing the role of the members of the Nominations Committee, or at least in the IBA Nominations and Election Bylaws) that the members of the Nominations Committee owe their primary fiduciary duties to the Association itself, not to the authority who nominated them.
 - g. In enhanced rules on campaigning it shall be regulated in more detail, what kind of campaigning is legitimate and what is not, in particular also vis-à-vis members of the Nominations Committee.
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Proposal to the Management Board

Clarification of Policy Development, Public Statements and Cross-Divisional Coordination (Who speaks for the IBA)

1. Purpose of this paper

This paper is submitted to the Management Board WG in response to questions raised during the CGC consultation process concerning:

Who speaks for the IBA?

- the authority of the Human Rights Institute (HRI) to issue statements as IBAHRI;
- the authority of the Executive Director to issue statements on behalf of the IBA; and
- the role of the BIC Policy Committee in reviewing policy material that transcends individual divisions.

The purpose of this paper is to ensure clarity and transparency regarding existing mandates, approval pathways and governance arrangements, rather than to propose significant structural or constitutional change.

Overall conclusion:

There are no fundamental governance problems in how policy is made or who makes it. The issues identified arise primarily from a lack of shared understanding of existing constitutional provisions, mandates and established practice. The appropriate response is therefore clarification, documentation and education.

2. Constitutional framework

2.1 Governing authority and policy-making powers

Under Article 4.2 of the IBA Constitution, the Council is the governing body of the Association, in which control of the Association vests.

*“Subject to the provisions of this Constitution, **the Council**, without limiting the generality of Article:*

4.2.1 shall have the general supervision and control of the affairs of the Association and accordingly shall supervise Management Board which shall in effect be the board of directors of the Association;

4.2.2 shall have the sole and exclusive authority on behalf of the Association to determine and make statements of policy in relation to issues affecting the legal profession”

This establishes that official IBA policy positions ultimately rest with the Council, whether adopted directly or pursuant to delegated authority.

2.2 Role of the Management Board

Pursuant to Article 5.1, the Management Board is responsible, subject to the Constitution and any directions given by the Council, for managing the business, finances and affairs of the Association between Council meetings.

Under Article 5.12, the Management Board may delegate all or any of its powers, duties and responsibilities, subject to such conditions as it considers appropriate.

These provisions provide the constitutional basis for the Management Board to oversee, clarify and document operational governance arrangements, including delegation and approval pathways.

2.3 Representation of the Association and public statements

The IBA Constitution has a specific provision on representation of the Association (*art. 3.24*)

*“No individual Member or Group Member or group of Members may organise any conference, seminar or other meeting using the name of the **Association or represent the Association or take any other action in the name of the Association**, without prior written approval of the President or, if organised or done by the LPD or a Constituent member of the PPID, an officer of such Constituent, after consultation with the President*

The article underpins the governance of public statements and external representation and confirms that authority to speak on behalf of the IBA is controlled and delegable.

On September 25th 2005 the IBA Council approved “Guidelines for External Communication of the IBA”. According to these guidelines;

“3. Each part of the IBA is authorized, and indeed encouraged, to communicate in its own name on matters falling within its scope of interest. In such communication it shall be made clear that the relevant part of the IBA speaks in its own name only, and not in the name of the Association. The Management Board shall be kept regularly informed of IBA external communication in an appropriate fashion.”

And further:

“5. According to the IBA Constitution, the IBA Council “shall have the sole and exclusive authority on behalf of the association to determine and make statements of policy in relation to issues affecting the legal profession” (below “Policy”). Special rules apply to communication involving matters of Policy as set out below. The meaning of the term Policy carries notoriety and should be sufficiently clear to persons involved in the communication without the need for any further clarifications. In case of doubt, the President will decide whether a matter of Policy is involved.

6. The following principles shall apply to communication involving matters of Policy:

- In communication on any matter where the IBA Council has adopted a Policy, such Policy must be accurately stated or conveyed;*
- In communication on any matter involving Policy where Policy has not (yet) been adopted, it must be clearly stated that views expressed do not represent the Policy of the IBA;*

- *On any matter where the Association’s interest may require that the IBA express views on Policy where such has not (yet) been adopted by the IBA Council, the President will decide how to act and how to communicate.*

The President will keep the Management Board and the Council duly informed of his or her decision.

2.4 Role of the President and Officers

The Constitution establishes the President as the principal representative of the Association (Articles 3 and 5, read together), with authority to act within mandate and to approve representation on behalf of the IBA.

The Constitution does not require Management Board approval for Presidential statements, nor does it prescribe a mandatory clearance mechanism beyond the President’s authority.

2.5 Constituents and the Human Rights Institute

Under Article 6.3, the SPPI, BIC and HRI are recognised as Constituents of the IBA, each separately and independently managed in accordance with its own bylaws.

*“The PPID shall primarily operate **through its separate and independent Constituent members** comprising the Association’s section on public and professional interest (SPPI), the Association’s bar issues commission (BIC) and the Association’s human rights institute (HRI), and its activities shall be coordinated by a steering group constituted in accordance with the bylaws of the PPID.”*

This confirms that the HRI is constitutionally embedded within the IBA structure and operates pursuant to its own governance arrangements, subject to consistency with the Constitution and Council authority.

Under the IBAHRI By-Laws, IBAHRI is governed by an independent Council and financed by its own funding (external donors, members, grants).

The mandate of IBAHRI can be understood as follows:

1. **Mission-based mandate:** IBAHRI's founding purpose — as defined on the website — is to promote and safeguard human rights and rule of law, with a special focus on independence of the legal profession and judiciary. That core mission gives it a substantive mandate to engage in human rights advocacy, produce reports, issue statements and adopt positions.
2. **Governance-based legitimacy:** Because IBA’s HRI is governed by its own Council under IBAHRI By-Laws, the internal Council can adopt “resolutions” on matters falling within its human rights mandate. The fact that IBAHRI maintains its own Council suggests that it is vested with authority to define its own priorities, issue statements, and adopt internal policy positions as IBA HRI.

3. **Autonomy but within IBA structure:** Although the IBA’s Human Rights Institute (IBAHRI) sits within the IBA under the PPID, it operates with a degree of internal autonomy, including its own Council and dedicated funding. That structure gives it operational independence. At the same time, it remains formally part of the IBA. So, in practice, its statements and resolutions are understood as positions of the IBAHRI specifically — not automatically as positions adopted by the full IBA membership. This distinction is reinforced by IBAHRI itself: its website refers to “IBAHRI Council Resolutions” as expressions of the Institute’s own values and positions.
4. **Mandate for advocacy, reports, technical assistance, and public statements:** IBA’s HRI’s work includes technical assistance, capacity building, trial observation, fact-finding, submissions to UN bodies, and public statements on human rights issues (e.g., independence of judiciary, death penalty, climate justice, treatment of lawyers, etc.).

Therefore the IBA HRI can adopt internal resolutions, issue public statements, release reports, and carry out advocacy and monitoring work — all under its mandate to protect human rights and uphold rule-of-law and professional independence.

3. What happens in practice today

3.1 Policy development and Council engagement

In practice, policy initiatives are developed within the relevant division or committee, often following consultation with other parts of the organisation where the subject matter overlaps.

Material with broader organisational implications is typically progressed to Council through established agendas and workflows. However, the steps in this process are not consistently documented in a single, accessible format.

The Constitution and by-laws define a wide variety of organizational structures in precise detail — but there is *no* definition of “policy” (or “official IBA policy”) as a defined term, with elements, scope, procedure, etc.

“Other” IBA outputs — e.g. “Guidelines,” “Reports,” “Resolutions,” “Statements” — come under committees, commissions or working groups. Some are formally adopted by Council; others are issued as committee publications or guidance documents.

As a result, whether a statement constitutes “IBA policy” depends on **how** it was adopted.

1. Council-adopted policy

Where the Council adopts a formal resolution or an explicit statement of policy, this constitutes official IBA policy. This is particularly relevant where the IBA defines its position on issues affecting the legal profession, including legal issues within the meaning of Article 2.2 of the Constitution. In such cases, future IBA pronouncements and activities must remain consistent with that position unless Council expressly resolves otherwise.

However, not every decision taken by Council amounts to policy. For example, administrative resolutions such as those concerning membership fees would not typically be characterised as policy.

2. Other IBA outputs

The IBA produces a wide range of materials — including guidelines, committee reports, resolutions, public letters, press releases, and similar documents. These are often developed and issued by Divisions, Committees, Commissions, or working groups.

Unless such materials are formally adopted or endorsed by Council — or explicitly grounded in existing Council-adopted policy — they should be understood as committee or office statements. They may reflect expertise, priorities, or institutional thinking, but they do not automatically constitute binding IBA policy.

This distinction is consistent with the *Guidelines for External Communication of the IBA* (approved by Council in September 2005), which note that “the term “Policy” carries particular weight and should be clear to those involved in communication. In case of doubt, the President determines whether a matter constitutes policy.”

For clarity going forward, the CGC proposes that Council should always be explicitly informed when it is voting on a matter intended to constitute “IBA Policy.”

Structural considerations

The absence of a rigid definition of “policy” has certain practical advantages. The IBA is a global and diverse association operating across multiple jurisdictions, legal systems, and professional cultures. Its governance framework relies on flexible bodies — Council, Management Board, and numerous Divisions, Committees, and Commissions — to deliberate and act within their areas of expertise.

A single, uniform definition of “policy” may not reflect this operational reality. The IBA addresses a wide range of subject areas — professional ethics, arbitration, human rights, law reform, bar association support, among others — and different types of outputs serve different audiences and purposes. But in conclusion, a Council adoption is required, where it:

- constitutes an official statement of IBA policy;
- expresses a position on behalf of the Association affecting the legal profession globally;
- binds the Association institutionally;
- concerns a Reserved Matter or
- concerns amendments to the constitution or dissolution of the organization (article 12).

Other matters may appropriately remain at Division or Constituent level.

4. Statements by HRI

The HRI regularly issues statements and positions within its Council-approved mandate and bylaws, often referred to externally as “IBAHRI”. IBA HRI is a Constituent of the IBA (Article 6.3). As such, it is bound by the Constitution, including Article 1.4. There is no carve-out exempting IBAHRI from the non-political rule.

IBAHRI can therefore not make “political statements” in the strict sense. But IBAHRI exists to operationalise the IBA’s purposes in the human rights sphere. As a result, the IBA has always interpreted “non-political” to mean non-party-political and non-geopolitical, **not** non-normative or non-critical.

IBAHRI may issue statements and resolutions that condemn violations of international human rights law, criticise legislation or practices that undermine areas such as judicial independence, lawyers' independence, due process, and fair trial rights. IBAHRI can further call on states to comply with treaty obligations and address issues such as arbitrary detention, attacks on lawyers or judges, use of the death penalty, systemic discrimination, accountability for serious international crimes.

These are legally framed statements, even though they may have political consequences.

The CGC consultation process revealed that some stakeholders are not sufficiently aware of the formal basis for IBAHRI's mandate or how its statements fit within the overall governance framework. This has led to questions of authority rather than evidence of overreach.

3.3 Statements by the Executive Director

In practice, the Executive Director issues communications and public statements in line with delegated authority, established policy and operational responsibility. The Executive Director's powers come entirely from delegation: Article 5.12: "The Management Board may **delegate** all or any of its powers... to such committees, subcommittees, or individuals... upon such basis as it thinks fit..."

Where a statement may be sensitive or potentially outside clear mandate, clearance is commonly sought from the President or Officers.

3.4 Role of the BIC Policy Committee

In practice, the BIC Policy Committee has developed an informal "vetting" or coordination role in relation to policy material that transcends the BIC or has wider impact.

This function has proved useful as a coordination and drafting support mechanism. However, its role is not formally codified beyond resolutions proposed by the BIC to the Association Council, as provided by art. 3.3.6 of the BIC bylaws "Policy recommendations or resolutions proposed by the BIC to the Association Council may only be made with the agreement of the Policy Committee." There is at present a limited clarity across the organisation to whether the BIC Policy Committee's involvement is expected, optional, or appropriate.

Discussions – both in lieu of the present consultations but also earlier - explored whether a broader policy committee with cross-divisional representation should be created. Among other concerns, there was a concern that such a step could introduce unnecessary bureaucracy in an already demanding process for bringing items to Council and prolong the organisations possibility of efficient change.

4. Issues identified

The consultation and discussions indicate that the key issues were/are:

- lack of transparency and shared understanding of approval and delegation pathways;
- uncertainty about who is authorised to speak on behalf of the IBA and under what mandate;

- limited visibility of existing Council-approved mandates (particularly in relation to IBAHRI); and
- absence of a clearly articulated coordination mechanism for cross-divisional policy material and an uncertainty about what policy is.

Importantly, these issues reflect **perception and communication gaps**, not structural or constitutional deficiencies.

5. CGC Recommendations

Recommendation 1: Publish a Policy and Statements Governance Note

Prepare a concise governance note setting out:

- the constitutional basis for policy-making and public statements;
- approval and delegation pathways for policy documents and statements;
- the roles of the Council, Management Board, President, Officers and Executive Director;
- circumstances in which cross-divisional consultation is beneficial/expected.
- what defines “policy” within the IBA setting and which matters needs the “institutional” authority of becoming a council resolution.

This should be framed explicitly as an “education” document reflecting existing practice.

Proposal for such a clarification/policy note attached as in **Annex A**, in a “**Policy and Statements Governance Note**” in a form that could be submitted to Council.

Recommendation 2: Confirm and circulate IBAHRI mandate documentation

This will directly address concerns raised during the CGC consultation process and reinforce the constitutional legitimacy of HRI statements.

Proposal/clarification inserted in Annex A, in the **Policy and Statements Governance Note** to be submitted to Council.

Recommendation 3: Clarify the BIC Policy Committee’s coordinating role

Rather than creating a new overarching policy committee, the CGC proposes formally acknowledging the existing practice whereby the BIC Policy Committee may, upon request, assist with:

- coordination of cross-divisional material.
- identifying potential policy conflicts;
- drafting support.

This role should be expressly non-mandatory, non-exclusive and **without veto power**. But the benefits of this offering should be stressed by leadership across the divisions as beneficial across the organization and especially for all guides, resolutions, and policies that may have cross-divisional effect.

Proposal/clarification inserted in Annex A, in the **Governance Note** to be submitted to Council.

Recommendation 4: Clarify delegation relating to Executive Director statements

Document the scope of the Executive Director’s delegated authority, including when Officer or Presidential clearance is expected, within the governance note described above.

Proposal/clarification inserted in Annex A, in the **Policy and Statements Governance Note** to be submitted to Council.

Conclusion

The Constitution provides a robust and flexible governance framework for policy development and public statements. The issues identified arise not from gaps in authority, but from insufficient transparency and documentation of how authority is exercised in practice.

By clarifying existing mandates, documenting procedures and reinforcing education across the organization the IBA can address current concerns while avoiding additional layers of governance.

Annex A

Policy and Statements Governance Note

(Clarification of existing mandates and practice) – to be submitted to Council.

1. Purpose of this Note

This note clarifies the constitutional basis and established practice concerning:

- development and adoption of IBA policy;
- authority to issue public statements;
- delegation pathways;
- cross-divisional coordination.

It does **not** introduce new governance structures or alter constitutional arrangements. Its purpose is transparency, consistency and shared understanding.

2. Constitutional Authority for Policy

2.1 Council authority

Under Article 4.2.2 of the Constitution, the Council:

“shall have the sole and exclusive authority on behalf of the Association to determine and make statements of policy in relation to issues affecting the legal profession.”

Accordingly:

- Official IBA policy rests with the Council.
- A position becomes “official IBA policy” when adopted by Council resolution or pursuant to Council-delegated authority.

2.2 When Council adoption is required

An issue should be adopted as a Council resolution where it:

1. Constitutes an official policy statement of the IBA;
2. Affects the legal profession globally in the name of the Association;
3. Binds the Association institutionally;
4. Falls within a Reserved Matter (Articles 2.1.45, 4.13.5, 12); or
5. Amends governance arrangements or the Constitution.

Where these criteria are not engaged, outputs may appropriately remain at Division or Constituent level.

3. What Is “Policy” in the IBA Context?

The Constitution does not define “policy” as a technical term.

In practice:

- **Council-adopted resolutions or formal policy statements** = official IBA policy.
- **Other outputs** (guides, reports, recommendations, letters, press releases, committee statements) reflect the position of the issuing body unless expressly adopted by Council.

Different outputs carry different institutional weight. Not every publication is — or should be — institutional policy.

This flexibility reflects the IBA’s global and plural character.

4. Roles and Responsibilities

4.1 Council

- Holds ultimate authority for IBA policy.
- May adopt policy directly or act on recommendations.
- Approves constitutional amendments and Reserved Matters.

4.2 Management Board

Under Article 5.1, the Management Board manages the business, finances and affairs of the Association between Council meetings.

Under Article 5.12, it may delegate powers subject to appropriate conditions.

The Management Board may therefore:

- Oversee operational policy pathways;
- Clarify delegation;
- Ensure appropriate documentation and coordination.

4.3 President and Officers

The President serves as the chief officer and principal representative of the Association (Article 7).

Authority to speak on behalf of the IBA rests with the President, subject to the Constitution.

The Constitution does not require Management Board approval for Presidential statements, provided they are within mandate.

5. Representation and Public Statements

Article 3.24 provides:

No individual Member or group may represent the Association or act in its name without prior written approval of the President (or relevant Constituent officer after consultation with the President).

This establishes that:

- Authority to speak on behalf of the IBA is controlled and delegable.
- Public representation requires constitutional authority.

Statements may therefore fall into three categories:

1. **Council policy statements** (institutional IBA policy);
2. **Presidential/Officer statements** (issued within mandate);
3. **Division/Constituent statements** (issued under their own governance authority).

On September 25th, 2005, the IBA Council approved “Guidelines for External Communication of the IBA”. According to these guidelines.

“3. Each part of the IBA is authorized, and indeed encouraged, to communicate in its own name on matters falling within its scope of interest. In such communication it shall be made clear that the relevant part of the IBA speaks in its own name only, and not in the name of the Association. The Management Board shall be kept regularly informed of IBA external communication in an appropriate fashion.”

Clarity of attribution is essential.

6. Constituents and IBAHRI

Under Article 6.3, the SPPI, BIC and HRI are recognised as separate and independent Constituents within the PPID.

Each operates pursuant to its own bylaws, subject to consistency with the Constitution.

Accordingly:

- IBAHRI may adopt resolutions within its human rights mandate.
- IBAHRI may issue reports, statements, submissions and advocacy materials consistent with its mission.
- Such outputs represent **IBAHRI**, unless expressly adopted by Council as IBA-wide policy.

IBAHRI is bound by Article 1.4 (non-political character).

In practice, “non-political” has been interpreted as non-party-political and non-geopolitical — not as prohibiting legally framed human rights advocacy. IBAHRI may issue statements and resolutions that condemn violations of international human rights law, criticise legislation or practices that undermine

areas such as judicial independence, lawyers' independence, due process, and fair trial rights. IBAHRI can further call on states to comply with treaty obligations and address issues such as arbitrary detention, attacks on lawyers or judges, use of the death penalty, systemic discrimination, accountability for serious international crimes.

These are legally framed statements, even though they may have political consequences.

The distinction between "IBAHRI position" and "IBA Council policy" should be made explicit in external communications where appropriate.

7. Executive Director Delegation

The Executive Director acts pursuant to delegated authority under Article 5.12.

In practice:

- Operational communications are issued within delegated mandate.
- Sensitive or potentially policy-level statements are cleared with the President or Officers.
- The Executive Director does not independently create IBA policy.

This note confirms that public statements by the Executive Director derive from delegation, not autonomous authority.

8. Cross-Divisional Coordination

Policy initiatives may originate within Divisions, Constituents, or committees.

Where material:

- overlaps divisional mandates;
- may conflict with existing Council policy;
- could reasonably be interpreted as institutional policy;

cross-divisional consultation is encouraged.

The BIC Policy Committee may, upon request:

- assist with coordination;
- identify potential policy inconsistencies;
- provide drafting support.

Its role is advisory, non-exclusive and non-mandatory. It does not exercise veto authority.

9. Practical Approval Pathways

Type of Output	Approval Pathway	Institutional Status
Council Resolution	Council vote	Official IBA policy
Constitutional Amendment	Council supermajority	Binding
Presidential Statement	President within mandate	IBA representation
Division/Constituent Statement	Relevant governing body	Represents issuing body
Executive Director Communication	Delegated authority	Operational

10. Conclusion

The Constitution provides a robust and adaptable framework for policy development and public representation.

Questions raised during consultation reflect differing perceptions of mandate rather than structural deficiencies.

This note clarifies existing arrangements and reinforces shared understanding without altering constitutional balance.
