

Minutes of the Meeting of the IBA Council

Thursday 17 December 2020, Virtual Meeting

1. Welcome and apologies

Horacio Bernardes Neto (IBA President) brought the meeting to order at 11:00 (London, UK time) and thanked everyone for joining the virtual Council meeting. He noted this would be his last Council meeting as IBA president and thanked everyone for their support over the past two years. He was pleased the IBA had made it through this difficult year and hoped for a better year in 2021.

He explained that questions could be entered into the platform's Q&A box or any participant could raise their hand to be promoted to make a comment or ask a question. Voting would be conducted via the Zoom polling function. He reminded the Council that only those participants with voting rights should participate in the polls and only one representative of each voting Member Organisation should participate in the polls.

2. Minutes

Péter Köves (Hungarian Bar Association) noted that at least five councillors were unable to join the virtual meeting due to a technical issue.

The meeting was paused in order to address the technical issue.

The President resumed the meeting as most participants had now been able to join the meeting, but he IBA staff will continue to assist anyone experiencing technical issues. He noted that the minutes from the IBA Council meeting in Seoul were included in the agenda papers.

The minutes of the last meeting were approved.

THE COUNCIL APPROVED.

Péter Köves repeated his concern that several people were still unable to join the meeting and felt that no votes should be held until everyone could join.

The President thanked Péter for raising this concern but said he would continue the meeting as the issues seemed to be on the participant end .

Berit Reiss-Andersen (Norwegian Bar Association) agreed that the issues seemed to be on the participant end and supported the President's decision to continue the meeting.

3. Management Board

Louis Buchman (Conseil National des Barreaux) asked if the minutes for the Management Board meeting that took place on 3 December 2020 were available as they were not included in the agenda package and, if they were not, he asked if there could there be a brief summary.

Almudena Arpón de Mendivil (IBA Secretary-General) explained that the minutes from that meeting has not been included as there was not sufficient time to review and circulate them.

The President added that those minutes would be included for the next Council meeting.

Mark Ellis (IBA Executive Director) said that his report coming up shortly will repeat the exact issues that he raised with the Management Board, so the Council will receive the same information, insight and process to be set forth for 2021.

3 BIS Proposal regarding 2021-2022 IBA Secretary-General

The Secretary-General reported that the IBA Secretary-General election for the 2021-2022 term was a contested election between Claudio Visco and Jaime Carey. This was the first ever electronic election for the Association and a discrepancy was raised regarding how the 40 per cent Legal Practice Division (LPD)/Section on Public and Professional Interest (SPPI) vote should be calculated. The way in which this discrepancy would be solved would have a direct impact on the outcome of the election. The query was submitted to the Constitution Committee, as agreed by the two candidates, but the Constitution Committee was tied in their vote on how to interpret the Constitution.

The Constitution Committee received advice from Watchtall Lipton and, after consideration, they remained unable to agree on the interpretation. The issue was brought to the Management Board which considered it not within their function to resolve the outcome of the election. Therefore, the proposal has been submitted to the Council with the suggestion that the position be shared and the need to have a review from the Constitution Committee on how clarify this discrepancy.

Claudio Visco, with the support of several bars, submitted an additional proposal which endorses the Watchtall Lipton Rosen & Katz advice and requests that the Constitution Committee follow it. Jaime Carey also circulated some thoughts about this situation and how to move forward.

The reformulated proposal suggests having two secretary-generals, and advises finding a consolidated proposal that should be circulated to Council shortly, resulting in a Council meeting where there will be a formal decision. The behaviour of all parties involved in this difficult situation has been impeccable.

The floor was opened to comments.

Claudia Seibel (Deutscher Anwaltverein) highlighted that her organisation felt there was no basis for the sharing of the secretary-general role between two persons. They recommend following the legal opinion received, which gives a clear indication of who won the election, and that a decision can then be made on amendments to the Constitution and Bylaws. It was questioned on what basis a joint role would be valid as it is not in the Constitution.

The Secretary-General confirmed that the Constitution refers to the secretary-general in singular and a sole winner of the election. From a technical legal perspective, appointing joint secretary-generals would require a Constitutional amendment as soon as possible within the parameters of the governance requirements. The Watchtall Lipton advice did not solve the tie of the Constitution Committee and it must be taken into consideration in their review of the governing documents. The priority is finding a solution which brings the Association to a peaceful and cohesive manner. This matter needs to be solved without the pressure of the current election.

The President added that this was a legal opinion requested by the Constitution Committee and they will continue to consider it in their further review of the Constitution and Bylaws.

Tim Powers (Election Scrutineer) thanked the President and the senior leadership for their courage, communication and compassion this year, which made everyone proud to be members of the IBA.

The focus in determining the election outcome has been largely on the interpretation of the Constitution.

This must be thoughtfully resolved prior to the next election without changing the spirit of the Constitution. The two candidates have agreed to share the position over the next two years, which is a magnanimous compromise and they have put the best interests of the Association ahead of their own. The final decision regarding any changes to the Constitution and election bylaws remains with the Council when they are presented with the proposal from the Constitution Committee.

The alternative proposal, submitted by Claudio Visco, focuses only on a requirement for giving meaning to ‘in person or by proxy.’ Wachtell Lipton advised that to be present in an electronic election it required some affirmative action from the Member Organisations, but that other reasonable interpretations were possible. What is clear from the recommendation of Wachtell Lipton and from the discussion of the Constitution Committee is that the Constitution, election bylaws and voting instructions must make clear as to what constitutes participation going forward. The amendments should ensure the same 40 per cent voting application in both electronic and in-person voting processes.

Eytan Epstein (Israel Bar Association) thanked the President for his contribution and leadership during this time. He supported Tim Power’s recommendation to the Council that the Secretary-General’s proposal be accepted. He reminded the Council of the spirit of the organisation as the voice of the legal profession and saluted both candidates for agreeing to this innovative solution.

Claudio Visco (Immediate Past Chair, Bar Issues Commission (BIC)) highlighted that this is a matter that concerns the Member Organisations and somebody should take a position on their behalf for this discussion. Michael Giesen, the other election scrutineer, is connected to the meeting by phone but cannot interact. As this cannot be resolved, Chantal-Aimee Doerries will speak.

Chantal-Aimee Doerries (Bar Council of England and Wales) thanked the candidates, the Constitution Committee and the Secretary-General for the work that has gone into this difficult situation. The proposals would require a constitutional change and it would be inappropriate to vote virtually today with regards to votes. As a leader of legal organisations, it behoves us to do that in accordance with our Constitution, and there is no doubt that there have been technical difficulties today. The Wachtell Lipton opinion is clear that the IBA does not have the discretion, even in the context of an electronic vote, to disregard the ‘present and in-person’ component. We would need very clear legal grounds if we were to proceed in any way today, other than to either comply with the Wachtell Lipton opinion or to put the matter for reconsideration by the Constitution Committee.

The President responded that there is not a technical problem on our side as there are 110 participants in the meeting. Secondly, he clarified that the Wachtell Lipton opinion was sought only by the Constitution Committee. He has separately sought another legal opinion, but this is not the time to discuss the details of the constitutional change. The Secretary-General has made a good proposal that notes there will need to be amendments to the constitution and bylaws. This should not interfere with the great friendships among us.

Chantal-Aimee Doerries noted that between lawyers we can disagree and remain friends. Her concern is about the constitutional nature of putting something to a vote that has not gone through the necessary hoops to change the Constitution today.

The Secretary-General clarified that there is not a constitutional change being put to a vote today. The proposal is for the appointment of two secretary-generals for two years, subject to the constitutional changes, which would then be subject to ratification by the Council.

The second point in the proposal is simply that the Council instructs the Constitution Committee on how to clarify the discrepancy. That instruction is not a change to the Constitution, but the outcome of what the Constitution Committee recommends may amount to an amendment, in which case the Council would

receive the information at least 45 days in advance. Today is meant to be an indicative vote.

Jaime Carey (Immediate Past Chair, LPD) thanked the President and leadership for their efforts in overcoming a challenging year. Claudio Visco and he believe that they will be able to work together to solve this problem, and have agreed to the proposal of serving as joint secretary-generals, subject to Council approval. But the Council has to solve this issue in the governing documents so that it doesn't happen again.

Next year presents the opportunity to review these documents and consider the technological processes of having virtual meetings and voting online. Whatever solution we reach will not change the spirit of the Constitution, the vote allocation or that we all want an in-person election and an electronic election to be calculated in the same way.

Peter Callens (Orde van Vlaamse Balies) noted his surprise at the situation. He comes from a country that survived over the centuries on its ability to reach compromise and he is strongly in support of the Secretary-General's proposal. He advocated amending the Constitution to give the organisation the fundamental text that will allow it to function in the years to come taking into account the new technologies.

David Gutierrez (Colegio de Abogados de Costa Rica) supported the proposal made the Secretary-General and Tim Powers' comments. He believes we should avoid law firms deciding elections as this is not good practice.

Martin Solc (Chair, Nominations Committee) noted that he strongly supported the Secretary-General's proposal. We must distinguish between this temporary solution and the permanent solution. The permanent solution will take time to discuss as it is not only the clarity of the language of the Constitution, but also the relative strength of votes. This should be discussed calmly and, if possible, in a face-to-face discussion. Whatever is adopted as a temporary solution should not prejudice the result of deliberations. There are many parts of the Constitution that could be improved, including this important section.

Hans-Michael Giesen (German Federal Bar/ Election Scrutineer) noted that the technological issues experienced during this meeting by some of the participants impacts the legitimacy of what is being done, but it is more important that the issue is being discussed. He has been involved in the strategic plan process since the Belfast meeting, and he and the bars have been told that anything could be done in a strategic plan but the Constitution and the delicate balance between the divisions and the Member Organisations reached in the last reform could not be touched. Under the rules as they currently exist, Claudio has narrowly won this election. There were Member Organisations that wrote emails indicating that they would like to remain neutral, not realising that they were giving 0.4 per cent of their vote to the divisions. This problem is not a technicality but a fundamental change within the organisation in the middle of the voting period. The facts are that Claudio has won the election, the rules have been changed in the middle of an election and the returning Officers have certified a result that is incorrect, which has been confirmed by a prestigious New York law firm. This is an unfortunate situation that is the result of the fait accompli that was attempted here, and we should try to resolve it in a way that hurts as little as possible. The Secretary-General's proposal, although well-intentioned, does not give the Member Organisations the security that the balance will remain unchanged.

The President responded that there were Member Organisations that wrote to Hans-Michael indicating that they wanted to remain neutral but were still participating.

Claudio Visco confirmed that he and Jaime Carey are both convinced that they would be able to perform the secretary-general role together. He thanked the Secretary-General for her efforts to solve this

situation. He accepts the idea to share the role, but he would like the issue to be solved permanently with a clear process on how this will be done. This is conditional on the commitment to come to a common proposal which will send clear instructions to the Constitution Committee on how the matter will be addressed and resolved. This agreement to share is conditional on the Council ratifying that we can have two Secretary-Generals. As we are all working in the interests of the Association, this is something that we can manage. He thanked the President, the Executive Director and the staff for managing the difficult situation of the past year.

The Executive Director wished to clarify a point relating to the fait accompli mentioned by Hans-Michael. When the returning Officers, Martin Solc and the Executive Director, were faced with this particular issue, it was faced without knowing what the results would be. They looked at how to retain the same voting allocation that has existed for years and at no time did they know who would win.

Michael Kutschera (Chair, Constitution Committee) noted that the instructions from the Secretary-General permitted the Constitution Committee, if it felt the need to do so, to obtain the opinion of a New York law firm.

When the Committee did not reach an agreement on the discrepancy, the next step was to seek the opinion of Wachtell Lipton Rosen & Katz ('Wachtell Lipton'). Wachtell Lipton agreed to do this over the Thanksgiving weekend and without charging a fee, for which we owe them great thanks. As doubt was raised whether the Wachtell Lipton opinion was addressed to the IBA: It is addressed to the IBA Constitution Committee, which is not a legal entity. If we had received a quote, the opinion would certainly not have been for the members of the Constitution Committee to pay for but for the IBA. Wachtell Lipton confirmed that there were no restrictions with respect to publication of their opinion. This ought to be a transparent organisation, so suggesting it should not have been shared is shocking. Also, there was mention of an opinion of an English law firm that should also be shared. But they had a different instruction, namely to confirm that the interpretation of the returning officers was correct and not to explore in general how the relevant provisions of the Constitution should be properly interpreted in case of electronic voting.

Finally, he noted that he has been admitted to the New York bar since 1985.

Sarah Hutchinson (Chair, SPPI) highlighted that this significantly impacts the future voting allocation of the divisions.

There are two outstanding candidates who have agreed in the best interests of the Association to stand as joint secretary-generals, which appears to have almost unanimous agreement. We have the means to overcome the constitutional restrictions in that regard.

In relation to how the constitutional rules are subsequently interpreted, there is disagreement and there are differences of opinion. The Wachtell Lipton opinion is just one opinion and there are other interpretations. In the heat of a contested election, it is not the time to neither restrict the remit of the Constitution Committee or to give any further instruction to the Committee as to how this should be decided. The proposal from the Secretary-General is excellent and we should proceed to a vote.

Peter Koves noted that there is no doubt that the Secretary-General's proposal has been made in goodwill after a huge thought process. The joint secretary-general position would probably be a good solution, however, he did not see the rush to make such a conditional resolution. For example, what would happen if the amendment to allow for the position to be shared would not be approved at a later stage? The IBA has been operating for more than six months without a Vice President, so a few weeks in the beginning of 2021 with only two senior officers should not be a problem. This proposal has not been made in accordance with the constitutional requirement of 45 days prior to the Council meeting.

The President mentioned that he did not see anything in the Constitution that would prohibit the sharing of the role. On the other hand, there are rules regarding the election that the certification cannot be changed. There are compromises from all sides which everyone should keep in mind. He thanked all the contributors for their thoughts.

He read a comment that had been written by **Stephane de Navacelle (Paris Bar Association)**, which said that the Paris Bar seconded Hans-Michael's opinion.

In any event he believes have outstanding candidates and among friends; we certainly do not question individual qualities and commitments.

Tomasz Wardyński (The Polish Bar Council) asked that is it not the case that, according to the Constitution, if the Constitution Committee cannot agree upon the recommendation than the Council should vote on which interpretation to admit. Perhaps the real problem is that we have two conflicting opinions and the Council should vote.

The President responded that as this was not included in the agenda, it would not possible to ask the Council to take such a vote at this time. Today the Council must vote on the Secretary-General's proposal.

Claudio Visco commented that before the resolution is put to a vote, he would like to know whether the Secretary-General agrees with the point he has made regarding his willingness to share the role, bearing in mind that the Constitution Committee be provided with the remit soon.

The Secretary-General confirmed that this was her understanding from the beginning. She proposes to have joint secretary-generals and to have a consolidated proposal that takes the main points of both proposals. She suggested that the agreement for the consolidated proposal should be early January 2021.

She agrees that we do not want to change the balance in the Constitution – we do not have to change the 40 per cent allocation to the LPD and SPPI for electronic voting. The rules must be equivalent to an in-person election.

The Secretary-General believes the rules have not been changed, which is why this is being discussed today and why we will be providing a comment remit to the Constitution Committee.

Transparency is a clear governing principle of this Association and if we can improve, we should improve. All information related to this has been made available in real time. Anyone who wishes for additional information should contact the Corporate Secretary and herself.

A resolution should not be rushed, but the outcome of the election has been pending since the beginning of November and we need to close the gap; we need to agree on the remit to provide the Constitution Committee. The vote today will be indicative and will allow us to move ahead and have formal ratification by Council when all information is provided 45 days prior to the meeting.

The President read a comment from **Berit Reiss-Andersen** noting that there is a dual interpretation. According to Hans-Michael, with whom she agrees, there is one candidate who actually won the vote, Claudio Visco. We should respect our democratic process.

The President highlighted that he has done everything possible not to be involved in this election issue as it would be inappropriate, but there was also certification of the election that indicates that Jaime Carey won. The rules of the election clearly say that this decision should be respected, even if made it error. We

are making compromises from all sides as there is no clear winner.

The wording of the proposal was updated to the following for an indicative vote:

That the position of secretary-general is shared jointly by the two candidates in the manner described in the Joint Secretary-General Terms Proposal submitted by the current Secretary-General. That the two candidates are thus appointed joint secretary-generals subject to formal ratification from Council and subject to agreement on a consolidated remit for the Constitution Committee. The Secretary-General jointly with the two candidates will work on a consolidated proposal which captures the main elements of Claudio Visco's proposal and of the Secretary-General's proposal. Such consolidated proposal should be agreed no later than 12 January 2021. The consolidated proposal will be submitted to Council at a meeting to be called no later than 12 January 2021. Should a consolidated proposal not be agreed, the current two proposals from the Secretary-General and Claudio Visco will be voted at said new Council meeting. The appointment of the two joint secretary-generals will be ratified at that same meeting.

THE COUNCIL APPROVED

The Secretary-General noted that this vote was indicative, and we will now work on the consolidated proposal with Jaime and Claudio to reach an agreement before 12 January 2021. We will have a meeting with sufficient notice in order to have these agreements formally passed.

4. Officer Reports

President

The President noted that his report was included in the agenda papers. He thanked the London staff and the Management Board for their support. It has been a very interesting year and, within the limits of what was possible, it was a very positive year as well.

Secretary-General

The Secretary-General noted that her report was included in the agenda papers and she had nothing further to add.

5. Report of the Executive Director

Mark Ellis (Executive Director) reported that when the initial lockdown as a result of Covid-19 was announced, the staff had to move quickly into a virtual situation and this was accomplished within 24 hours.

The primary concern has been financial stability and we had to pivot very quickly to keep the strong reserves intact. All liabilities for Vilnius were shifted, as were the liabilities for the 21 specialised conferences scheduled between March and June. Miami was a huge liability that has all been shifted to 2022. It was ensured that no additional deposits would be required for Mexico. We are in discussions with Paris on potentially moving the Annual Conference to a future year. The Association relies heavily on the Annual Conference for income, but we came out in a very good position at approximately £4.1 million versus £4.5 million in 2019.

Internally skills were transferred between the staff and we implemented pay freezes, job shares, furloughs and, unfortunately, redundancies. Substantial costs were saved by moving printed publications online.

We had to ensure that we were relevant and providing value to members and non-members. There was an extraordinary collaboration between staff, divisions and committees to put out 132 webinars that attracted 100,000 registrants.

There were 85 press releases versus 37 last year, which indicates the level of focus in delivering content. Over 13,000 delegates from 160 countries registered for the Virtually Together Conference. The committees did an unbelievable job in providing high quality webinars and there were 20 ‘Conversation with...’ speakers. The sponsorship was stronger than anticipated and combined with the paid delegates, the Conference earned over £1 million. Tribute was paid to the leadership but especially to the staff for their extraordinary work.

The business model that we implemented was successful and that gives us guidance for next year. Looking ahead we must manage the depletion of the reserves until we come out of this crisis. Without the reserves the Association would be facing a crisis even greater than what we have over the past ten months. Next year will begin with approximately £29 million in reserves, which gives the Association a strong base to navigate out of the crisis. We will have to continue to cut costs and look for ways to increase revenue, but we are confident that this can be accomplished.

No in-person events are being planned for Q1 and Q2 but will possibly take place regionally in Q3 and especially Q4. The London staff will be moving into a smaller office as the lease of the current office expires in March. Group members will be a key focus along with virtual events and content. There will be a new database that will pay major dividends. The model that we have been using will continue into 2021 and 2022, but there is a light at the end of the tunnel, and we are very hopeful for the future.

Claudia Seibel (Deutscher Anwaltverein) asked for clarification on the risks that have been shifted to 2021 and 2022. Additional clarification was sought regarding the percentage of webinar participants that were paid and if the office move will take place in March 2021.

Membership is decreasing and although a couple of firms have agreed to join as group members, it’s not clear if these decisions were taken last year or in the midst of the crisis; knowing that would let us know if there is still interest in the IBA. Without having the 2021 budget, it is extremely difficult to discuss in detail what will occur next year.

The President was also asked to clarify if the indicative vote was done with a head count or weighted votes.

The President responded that the result of the indicative vote would be checked after the meeting and that the Council would be emailed with the confirmed result.

The Executive Director explained that shifting the costs means that the Association has shifted the liabilities because we were contractually liable to pay these charges. The costs for the specialist conferences and Miami were shifted to 2021 and 2022, as were the costs for Mexico. The key objective is to stretch the reserves as much as possible and not spend them on these liabilities.

The Virtually Together Conference was divided with a paywall, which gave the delegates access to the month-long conference, including networking. Participants joining outside of the paywall were able to join the public law, HRI and BIC sessions without cost. The paid delegates combined with the sponsorship was over £1 million.

The office move will happen as the current lease expires at the end of March. This will likely be a temporary office for at least a year, which provides the opportunity to assess how best to structure the office going forward.

Much of the membership income for the year was received at the beginning before Covid-19. The Membership Team continues to engage with Group Members, but there is no doubt that 2021 will be

budgeted with smaller membership dues received. We will continue to deliver content and value to our members so that they continue to want to be a part of the Association.

Jörg Menzer (Vice Chair / Treasurer, SPPI) highlighted that the digital offerings of the webinars and the Virtually Together Conference have been great. In the future, all the officers would do well to fully register in order to better evaluate the value.

6. Updates from the Executive Director to the Management Board

The Executive Director noted that these update reports were included in the agenda papers.

7. Finances

Carola Van Den Bruinhorst (IBA Treasurer) reported that the 2021 budget is not on the agenda for this meeting. The budget is only prepared at the beginning of the year as results come in so late. The agenda includes figures from June 2020, as well as a balance sheet and cash position.

2019 was a good year that contributed to the reserves with a surplus of £1.6 million due to the successful Seoul Annual Conference, excellent specialist conference and strong investments. We have been trying to continue to improve our governance and have sent an annual report to the Council, which will become part of an ongoing process that will improve over time.

The Audit Committee is becoming more important in relation to finance and is meeting more often. We have an independent member of the committee and have introduced amber and red alerts for the cash flow during these difficult times. Working with our new auditors this year went smoothly. The Treasurer thanked the IBA Finance Team and especially the Finance Director, Lucie Risley, for her tremendous support.

There were only five specialist conferences held this year before the pandemic. The IBA showed great resilience and creativity in turning to alternative programmes and projects quickly. Cash position has become key and we continue to look for possibilities to cash in and manage our cash flow in order to pay our liabilities when they are due or renegotiate to an appropriate time. The budget is normally approved at the February Management Board meeting, but we decided to have a rolling forecast throughout the year with a prudent methodology.

The June 2020 figures included in the agenda pack shows that the mid-year balance sheet remains strong and stable. The investments had a dip in value at the early onset of the pandemic but have regained value. Cash was decreased, but not dramatically. Member dues were primarily paid at the beginning of the year. There is an overall deficit of 1.75 million at mid-year, which include half a million gain in investments. Gross operating income is much lower than any other year due to the lack of specialist conferences. The loss was relatively limited as the liabilities were postponed to future dates. Those costs will be added once we know that no further postponement is possible, but it should be noted that the venues want to work with us.

We are doing everything we can to engage our membership, but we predict 2021 will be more difficult as we had less opportunity to have direct contact with our members this year.

There was an emergency meeting of the Audit Committee in September and the Board agreed to liquidate 5 million of investments to lock in some of the gains and to increase the cash flow to cover 2020 and part of 2021 costs. The estimated landing for 2020 has been updated to a lower deficit of 3.2 million for year end thanks to the successful negotiations of the IBA Conferences Team to shift liabilities to later dates.

Staff costs have been cut and overall the IBA has halved its cost base for 2020. The Virtually Together Conference brought in £1 million of revenue and we are looking at a gain on our investments of £1 million. The forecast for the balance sheet will be no less than 29 million, which is very positive based on the turmoil of this year. This does not mean that the IBA can return soon to its previous spending. We know that travel will be limited in 2021 and therefore our activities as well.

The 2020 audit will begin in February 2021 with the aim of sending the signed, audited accounts to the mid-year Council meeting. RSM continue to be our IBA auditors as the Council approved their continued appointment.

THE COUNCIL APPROVED

Péter Köves (Hungarian Bar Association) questioned the tally of the Zoom polls conducted during this meeting.

The President confirmed that all the poll outcomes would be checked manually at the conclusion of the meeting.

8. IBA Strategic Plan Working Group Report

Peter Bartlett (Vice Chair, LPD) noted that the strategic plan was included in the agenda pack and he thanked the members of the Strategic Plan Working Group, as well as Tim Hughes in the London office and the consultants, Gerard and Stefanie. James M Klotz was the initial leader of the Working Group and Peter took over upon his resignation.

He thanked the bars and law societies that have been passionate about this issue and assisted in this process, especially the Law Society of England and Wales, Association of Danish Law Firms, Polish Bar, Bar Council of England and Wales, The German Federal Bar, and the Danish Bar and Law Society.

The LPD Vice Chair also thanked the IBA Membership Committee, IBA Diversity and Inclusion Council, and many others who have assisted the Working Group. He thanked Immediate Past President, Martin Solc, for the seven working groups that were formed and all their contributions. He thanked the President for establishing the Strategy Working Group.

Valuable input was received from the Member Organisations and a draft of the plan went to the Management Board in February. Things have changed dramatically since February and the challenges to the profession are significant. This is a plan that many members will be disappointed with and the Working Group members do not think it is perfect, but it is realistic in the present environment.

The Working Group recommends the addition of a paragraph that was distributed to Council, as was the Reference Document, which is simply a document intended to assist those tasked with implementing the strategic plan. Much of the feedback received was focussed on Covid-19, technology issues, implementation and governance, which we have tried to address in the strategic plan. We recommend to the Council that the plan be adopted and that there be regular updates to the Council by the responsible bodies in relation to implementation.

Deborah Enix-Ross (Vice Chair, BIC) reiterated that this is a first step and implementation will be essential, as will the governance review. An important part of the implementation will be reporting back to the Council.

Jörg Menzer (Vice Chair and Treasurer, SPPI) added that all parts of this great Association will have to contribute to the implementation. The Council meeting today has highlighted that there is still

uneasiness, suspicion and politics within the organisation. Anyone who still has doubts should examine what they can do to help the IBA move ahead and to serve its claim to be the global voice of the legal profession. We will achieve this by implementing the strategic plan, but only if we do it together.

The President explained that at the beginning of his presidency, he nominated the deputies of the division leadership to serve on this Working Group. He thanked the Working Group and Tim Hughes for their incredible work.

Hans-Michael Giesen (German Federal Bar) thanked the Working Group for the huge amount of work that is hard to appreciate from the outside.

Peter Bartlett has struck the right tone. The necessity for such a plan in view of Covid-19 is more pressing than it was when this process started. This plan should function as an energiser and be used as an opportunity to start the ambitious implementation phase, with as much involvement from within the organisation as possible. The governance review, including outside professionals, is a very important part of this overall process. There is a lot to be done, including analysing governance issues and proposing possible solutions. Notwithstanding many criticisms in detail and remaining reservations, he believed that this plan should now be adopted.

Gerard Tanja (Consultant, IBA Strategic Plan Working Group) highlighted that it was a privilege to work with Strategy Working Group members throughout this very collaborative and inclusive process. Strategy is about making choices considering the absorption capacity of the organisation. And while there are differences of opinion and not every wish can be satisfied, this is a good basis for a realistic and feasible implementation. The Working Group has identified the correct priorities.

Stefanie Hoogklimmer (Consultant, IBA Strategic Plan Working Group) the diversity of views has been enriching and lead us to a result that is a good basis to build on.

The Council voted to approve the strategic plan.

THE COUNCIL APPROVED

9. Member Organisations

a) Pending applicants awaiting approval

Michael Clancy (Chair, Credentials Committee) commended Rebecca Ruler, Diana Kharchenko and Becca Verhagen for their invaluable assistance and thanked the amazing committee members for their hard work. He reported that the following organisations were being recommended to the Council for admission as IBA members:

Full

1. Law Council Gibraltar (Gibraltar)

Sustaining

1. South Asian Bar Association of North America (United States)
2. Taipei Bar Association (Taiwan)

The membership applications of the Law Council Gibraltar, South Asian Bar Association of North America and Taipei Bar Association were approved.

THE COUNCIL APPROVED.

b) Member Organisations for suspension

Mark Ellis (Executive Director) reported that Member Organisations that have not paid for the past four years would be suspended on 31 March 2021 if their membership fee remains unpaid. Any Council Member who has contact with one of these member organisations is encouraged to reach out to them.

- The Bar Association of Belize
- Brazilian Bar Association - Branch of Rio de Janeiro
- Arab Association for International Arbitration
- International Law Section of the Florida Bar
- State Bar of California

10. Proposal regarding 2021 annual membership fees for IBA Member Organisations

Carola Van Den Bruinhorst (IBA Treasurer) reminded the Council that at the Seoul meeting they discussed the Management Board's proposal to increase the annual membership fees for IBA Member Organisations based on United Kingdom inflation rates, which is also used for other membership categories. The Council accepted a raise based on this for 2020, but not an automatic increase based on UK inflation. The increase only takes place if UK inflation is above two per cent in the year. If it is below two per cent there is no increase and it is rolled over into the next year, which was the case for 2020. It was agreed to be rolled over into 2021, but given the exceptional circumstances this year, the Management Board now suggests not to increase the fee for 2021 and the earlier 1.9 per cent should be rolled over to 2022.

The Council voted to approve the Management Board proposal for no increase to the 2021 annual membership fees for IBA Member Organisations.

THE COUNCIL APPROVED.

11. IBA Rules on the Taking of Evidence in International Arbitration

Deborah Enix-Ross (Vice Chair, BIC) noted that revised version of the *IBA Rules on the Taking of Evidence in International Arbitration* was included in the agenda papers. The Policy Committee have reviewed the revisions that have been proposed and provided the IBA Arbitration Committee with comments, but trusts their expertise and supports the request that the Council approve these revised rules.

THE COUNCIL APPROVED.

12. Reports from IBA Divisions

Legal Practice Division (LPD)

Jon Grouf (Chair, LPD) thanked the President and Secretary-General, the LPD Officers and the London office, especially Ronnie Hayward and Dina Antoniou. He recognised the Executive Director and the staff for keeping the IBA going throughout this terrible year. The survival of the IBA is the most critical issue that should be discussed by Council. The political disagreements should be put aside, and the focus should be the survival of this wonderful organisation.

Section on Public and Professional Interest (SPPI)

Sarah Hutchinson (Chair, SPPI) highlighted some important reports that had been published this year, including the report on the harassment and criminalisation of LGBTQI+ individuals in the Latin

American and Caribbean region, and the blueprint on global legal education. She thanked the committee officers who made such a fantastic contribution with these important reports, and recognised Association's work, the human rights executive and the Rule of Law Forum for making statements, videos and webinars on the rule of law at a time when the profession was seeing significant encroachments on our independence.

The Virtually Together Conference showed a way forward as an organisation to have a more rounded offering to our members, not just focussed on face-to-face, but a much broader connection to young lawyers, lawyers from developing bar associations, and so on. She thanked the President and the Secretary-General for their fantastic leadership, and Jörg Menzer as the incoming Chair of the SPPI. She thanked the Executive Director for running an excellent staff, particularly Astrid Wargenau, without whom she would not be able to function.

Human Rights Institute (HRI)

Sarah Hutchinson (Chair, SPPI) noted that she had been asked to provide an update on behalf of the HRI. The HRI produced a wonderful film to celebrate its 25th Anniversary on Human Rights Day, which was a very moving and professional piece of work. Three enforcement reports authored by the High Level Legal Panel of Legal Experts on Media Freedom published in 2020. There were a record number of interventions on crackdowns in Egypt in support of detained Iranian human rights lawyers and condemning harassment of a Polish judge. A brief was provided to the Brazilian Supreme Court on human rights law, virtual training was provided to lawyers in Central Asia based on the toolkit for lawyers at risk, training was provided to Tunisian legal professionals and to Peruvian lawyers, and funding was secured from the High Commissioner in India to carry out training for judges relating to sexual and gender-based violence.

Bar Issues Commission (BIC)

Kimitoshi Yabuki (Chair, BIC) recognised the President and the Secretary-General, as well as the London office led by the Executive Director, for their contributions to the IBA and their efforts to bring unity among the constituents. He thanked the BIC Officers and four BIC committees for their hard work in ensuring the success of their Virtually Together Conference sessions, which were focussed on bar related matters, including climate change, Covid-19, and mental health and wellbeing.

The BIC also extended its efforts to developing bars through capacity building projects in Ethiopia, Indonesia and the South Pacific. The Commission will continue to strengthen its efforts to work with developing bars in the future. There has been extensive discussion about the strategic plan and every effort will be made to assist with the implementation moving forward. The BIC looks forward to having unity with the other constituents and working collaboratively.

The President thanked the Division Chairs for their exceptional work.

13. Reports from Presidential Showcases

The President reported that the Presidential Showcases throughout the Virtually Together Conference had been very successful, and he thanked everyone who had contributed.

Attorney wellness - what bar associations must do to address the growing crisis

Steven Richman (BIC Officer) thanked the President and Deborah Enix-Ross, as well George Artley and Sara Carnegie from the IBA Legal Projects and Research Unit, for their efforts. The Showcase featured a lively discussion on the very important issue of attorney wellness. This was an issue before Covid-19 which has been exacerbated in many respects by the pandemic. A Task Force has now been formed with representation across the six continents, with a plan to aggregate the work that is being done

by other entities within the IBA to create a set of best practices or a toolkit that will make a difference.

Deborah Enix-Ross (Vice Chair, BIC) added that Steven Richman had done an excellent job and noted that this important work would be ongoing.

Global trade wars - attack on the rule of law. What is the impact on future of the World Trade Organization and global business strategy?

The President noted that the report was included in the agenda papers.

Century XXI: lawyers on impact investment and sustainability

Luis Carlos Rodrigo (Co-Chair, IBA Latin American Regional Forum) thanked the President for entrusting them with this showcase. It is an important and timely issue featuring the most relevant elements of future of business, and is a dynamic element of a matrix of companies' environmental, social and governance results and issues. This matrix determines where the biggest equity firms invest and put equity and financing. The Task Force worked with an academic group to create a paper available on the IBA website, that provides practical recommendations for private and in-house lawyers to be able to comply with the requirements to receive equity and financing from institutions focussed on impact investment.

Reinventing global legal education to address the ongoing transformation of the legal professions: a blueprint for change

The President noted that the report was included in the agenda papers.

14. Reports from Standing Committees

Nominations Committee

Martin Solc (Chair, Nominations Committee) noted that the written report was included in the agenda papers and he reminded the Council that there was a preceding report dated 15 June 2020 that was circulated at that time. He thanked the Nominations Committee members for their hard work. The nomination of Deborah Enix-Ross was approved conditionally as she would be serving for a third term, which is a term that must be approved by the Council.

THE COUNCIL APPROVED.

The Secretary-General congratulated Deborah Enix-Ross and noted that the Association was fortunate to have her involvement.

Constitution Committee

Michael Kutschera (Chair, Constitution Committee) reported that the Constitution Committee spent a lot of time trying to reach a solution in the discrepancy relating the election of a secretary-general. The spirit and behaviour of everyone involved was always very respectful and peaceful; regretful this spirit seems to be fading away because of this Council meeting. He commended the Secretary-General for handling this matter with extreme professionalism and great courage. He thanked Becca Verhagen for her research and providing the historical records necessary for this review.

The Secretary-General thanked the Chair for his leadership and thanked the Committee as it played such a significant role this year.

Online Services

Jörg Menzer (Chair, Online Services Committee) noted that the report was included in the agenda

paper and congratulated the London office for implementing the backbone. The SAP system (enterprise application software) is being implemented, but the Virtually Together Conference meant that the team had to work a little less on implementation as a result. This is a great effort in addition to the other digital services offered.

The Secretary-General thanked the Chair for serving on this Committee which is growing in importance.

IBA Foundation

Hansel Pham (Chair, IBA Foundation) noted that the report was included in the agenda papers. He highlighted that the IBA Foundation had held a very successful virtual Town Hall on global pandemics and the rule of law, and he thanked Homer Moyer and the IBA North American office for their considerable efforts. The Foundation was pleased to contribute \$100,000 USD to support the IBA's initiative to provide funding for frontline legal aid providers and it looks forward to working further with the IBA on rule of law projects.

Human Rights Institute Charitable Trust

There were no additional comments.

The President thanked the Standing Committee Chairs for their contributions to the IBA.

15. Reports from Management Board Committees

Diversity and Inclusion Council

Chris Watson (Co-Chair, Diversity and Inclusion Council) thanked Grace Egbewole-Adereti, formerly from the London office, and the working groups for their efforts, particularly Masako Bano.

The Speaker Bureau Working Group has had to deal with difficult technical and practical issues. The Harassment and Bullying Working Group has produced a very useful report. The Unconscious Bias Training Working Group has a programme to train IBA members, which has been put on hold and hopefully will come back, and a research project on women in law. The continuing support of the IBA for these projects is greatly appreciated. He thanked the Co-Chair, Fiona McLeod, for her enthusiasm and hard work.

Digital Committee

Jörg Menzer (Chair, Digital Committee) noted that the report was included in the agenda papers. The committee had some working group experiences, did some research and supported the implementation of the SAP system by reaching out to the board of SAP to save a significant amount of money. This work will continue, especially in evaluating what we have learned from the Virtually Together Conference. The Committee will support the London office in identifying what must be done to ensure its success over the coming years.

Projects Committee

Peter Bartlett (Chair, Projects Committee) noted that the report was included in the agenda papers. There are currently 134 very active projects within the Association, and they are on the database. Grace Egbewole-Adereti did a wonderful job supporting the committee and it is disappointing that she is no longer with the IBA. There was an excellent list of reports in 2020 on a whole range of issues. There is so much talent in every area of the IBA and it is inspiring to see what our members are doing.

Membership Committee

Pascal Lagesse (Chair, Membership Committee) reported that the Committee has been working closely with the Strategy Working Group, looking at what needs to be done and ideas to focus on moving forward

to further improve the membership base. Membership is key to the IBA and we will have to work very hard on content and value. 80 per cent of Individual Members registered at the beginning of the year, so we will have to be prudent looking at the figures next year. We should remain positive as the membership revenue was still quite good given the difficult circumstances.

The President thanked the Chairs for their excellent work.

16. Reports from Deputy Secretary-Generals

The President noted that the written reports were included in the Council agenda papers.

Sky Yang (Co-Chair, IBA Asia Pacific Regional Forum) reported that the Forum had undertaken many meaningful activities this year despite the pandemic. He highlighted the Doing Business project, mandating each Forum Officer to reach out to the major law firms and lawyers in the 11 Asia Pacific jurisdictions to ask them to contribute to a summary analysis of several legal practice areas. This 550-page guidebook was completed this year and provides consolidated knowledge of expert lawyers in these jurisdictions. The Forum held three successful sessions in the Virtually Together Conference and contributed to four others. The Forum continues to tentatively plan its biannual conference in Singapore next year.

Luis Carlos Rodrigo (Co-Chair, IBA Latin American Regional Forum) reported that the Forum has been working unitedly in this difficult year and has been holding biweekly video meetings to maintain a strong connection among the Officers. The first focus was on issues relating to Covid-19 and there was a survey on wellbeing of lawyers, followed by a webinar on how Latin American firms were dealing with this. The Forum also held a diversity and inclusion webinar early in the year, webinars every other month and led five sessions throughout the Virtually Together Conference.

The Forum was involved in the task force on impact investment that was discussed earlier in this meeting. They are also working with the IBA to determine if their conference can be held in São Paulo in August or September 2021, or if it will be virtual.

The President thanked the regional fora for their work and highlighted the importance of expanding the IBA's presence in their regions.

17. Any other business

The Executive Director recognised that the President's term was coming to an end, which was a sad occasion but also cause for celebrating his contributions to the Association. No one dreams of becoming the President of the IBA and have to deal with a global pandemic. The IBA owes the President a huge amount of gratitude for his leadership and for his substantive work, including wellbeing of lawyers, rule of law, and bullying and harassment. He is kind, generous, funny and has a sense of justice, and the staff has always appreciated this. The President was presented with a gift on behalf of the IBA.

The Secretary General added her thanks to the President for his generosity, loyalty, and great spirit.

The Executive Director thanked the President's wife, Ana Cristina, as she has been there every step of the way and is so gracious.

The President thanked everyone for the gift and said he was so happy to have been the President of the IBA. He has done his best for the Association, as he has been doing for the last 30 years. He thanked the Executive Director and the staff, as well as the Secretary-General and the Management Board.

There being no further business for the Council, the meeting ended at 1629 GMT.

Becca Verhagen
January 2021