

## **Procedures governing the adoption of committee positions and related matters**

### **Membership of Committees**

All Branch committee members are required to be dues-paying members of the AB-ILA. Those who want to participate actively in committee work should be encouraged to join the AB-ILA. This requirement by no means prevents consultation with non-committee members about any particular project. The committee member who is managing the project should tell committee members and the Director of Studies, once the final product is submitted for review, about any such consultations so they are all aware of the input and its source.

Once per year the chairperson of each Branch committee should send an email to his or her committee members reminding them of the need to renew, ideally at approximately the same time that AB-ILA dues notices are distributed. Also once per year, generally a few months after membership renewals are due, the chairperson of each committee should consult with the person in charge of maintaining the membership roster to ensure that he or she has an up-to-date list of members, and update his or her emailing list accordingly. In the interim it is the responsibility of the chairperson to update his or her membership list should new members indicate a desire to join the committee.

### **Conflicts of interest**

At the outset of any program of work, the Chairperson of a committee should assess whether he himself, or she herself, has a conflict of interest and should inquire of the committee whether anyone has a conflict of interest and invite recusal on those grounds. Proponents of any particular committee action should indicate whether the proponent has any professional or financial interest or relationship, direct or indirect, in any procedure, including but not limited to litigation, regulatory action, or a lobbying campaign, when they propose the committee action. Many members will have some knowledge about or expertise in a particular area or even about a particular issue; that alone is not enough to amount to a conflict of interest, which requires an immediate, direct interest in a particular set of issues such that the perception of his or her involvement in any committee report or other action involving those issues would compromise the integrity of the process. Examples of such direct interest include involvement in litigation or other dispute resolution process, in a regulatory proceeding, or in a lobbying campaign that directly relates to the subject matter on which the committee is proposing to act. Persons who want to participate in committee work in a “private” capacity notwithstanding professional affiliations should add a disclaimer clarifying that their work is done for themselves, and not on behalf of an otherwise interested organization. The work product should ordinarily identify anyone who has a conflict of interest and specify that the person did not participate in the project. If for some reason the person prefers not to be named, the committee Chair should keep internal records reflecting the conflict.

Any concerns or dispute over whether a person has a conflict of interest should be referred in the first instance to the Director of Studies for consultation about avoiding or managing the conflict. Should those consultations be insufficient to resolve any concerns, recourse may be had to the Executive Committee. Potential conflicts should be addressed earlier rather than later. In the event that a committee work product is found to be tainted by a conflict of interest its issuance could be precluded if different remedies would be unavailing to resolve any concerns raised by the particular conflict. Again this decision would be made in the first instance by the Director of Studies, with final recourse to the Executive Committee.

### **Committee Work Product**

Committees are expected and encouraged to engage in a wide variety of projects, including writing letters to decision-makers, issuing reports, writing books, drafting *amicus curiae* briefs, and the like. A Branch Committee report or other work product does not represent the position of the American Branch. Although a Branch Committee may take a position on policies, events, or interpretations of international law, such a position represents solely the views of the Branch Committee. All such work product must be identified as a product of the Branch Committee, rather than of the American Branch as a whole or of the ILA. Thus, all such communications should be distributed on Branch Committee letterhead, rather than on AB-ILA letterhead, to avoid the suggestion that the Branch places its imprimatur on a particular report or other action item.

Branch Committee communications should to the extent possible be products of the Committee as a whole. The Chairperson, or other proponent of the project, should involve the Committee membership as early as possible to participate in the drafting of the work product, and should where appropriate solicit responses during the drafting of any report. Once the project is finalized, the Chairperson should solicit approval of the product from all Committee members. This approval may be solicited by “negative clearance” – an email or other communication asking for a response and specifying that the absence of a response will be deemed approval. Requiring affirmative approval from every Committee member would be cumbersome and would very likely inhibit or even stop Committee activity; hence the negative clearance option. The Chairperson, or other person soliciting approval, should give a reasonable amount of time for committee members to respond; ordinarily that would be at least one week. In emergency situations (e.g., proposed acts responding to imminent crises) the period might be reduced in consultation with the Director of Studies or, if the Director is not available, with the President and Vice-Presidents of AB-ILA.

A proposed Committee product that generated no opposition would be deemed “clean”. It should be prepared in accordance with the provisions below regarding signing and the designation of any conflicts and would be sent to the Director of Studies in accordance with the procedures listed below.

A proposed Committee product that generates opposition from among the members would be subject to further review. The committee Chair or other responsible person should attempt to take into account the concerns expressed and to accommodate them if possible without undermining the product itself. If that is not possible, the next step would be an assessment of

the extent of the opposition and the extent of the support. The Chairperson or other responsible person should consult with the Director of Studies about the nature and extent of the opposition. Generally speaking, a few dissenters opposed by multiple proponents should not be allowed to derail a committee project. Those dissatisfied with a decision that a project can move forward can seek relief from the Executive Committee. In the event the project moves forward, but it does not win the unanimous support of the committee, the product should note that fact. Those members who wish their opposition to be noted by name should have that wish honored.

More elaborate procedures should govern work product that generates significant opposition. Such products should be reassessed in light of that opposition and referred to the Director of Studies, who will attempt to work with the committee to come to a resolution. Options to resolve such impasses include but are not limited to polling the committee membership to ascertain the positions of all willing to opine, revising the work product to take into account the opposition's concerns, permitting the inclusion of dissents or concurrences, seeking outside opinions about the merits of each side, making minor editorial changes to alleviate concerns, and preventing the publication of the product altogether. Those dissatisfied with the decisions made by the Director of Studies can seek relief from the Executive Committee.

Committee communications are committee products. As such they will ordinarily go out under the name of the Chairperson of the committee and, as described above, on committee letterhead. When an individual other than the Chair or group of individuals has been closely concerned with drafting the project, their names might be listed on the product so long as they agree explicitly to have their names included, and provided that the Chairperson and the AB-ILA Director of Studies agree that the designation would be appropriate.

All communications should contain the following disclaimer making clear that the communication reflects the views of the committee and not the views of the Branch:  
"This communication reflects the views of the XXX Committee of the American Branch of the International Law Association, but does not represent the official position of the American Branch as a whole."

The communication should ordinarily identify any individual whose conflict of interest prevented participation and indicate clearly that the person took no part in the preparation of the communication. If the person does not wish to be named publicly then the Chair should keep records indicating the steps that were taken to avoid the conflict of interest.

### **Director of Studies Review and Executive Committee Recourse**

The Director of Studies must review any work product that presents the committee's conclusions or recommendations outside the committee. The Director of Studies will have 10 days to review and comment on any "clean" work product. Those products that have attracted substantial opposition, as described above, might take longer than 10 days to resolve, but shall be dealt with as expeditiously as possible. As noted above, any concerns with the resolutions proposed by the Director of Studies can be referred to the Executive Committee for final decision.

The review of the Director of Studies is procedural only; the primary responsibility of the Director of Studies is to ensure that the committee has complied with the procedures described above. The Director of Studies does not review the substance of the product for the purposes of agreeing or disagreeing with it on the merits. The Director of Studies does, however, have the responsibility of assessing whether the work product would cast disrepute on the Branch and is otherwise in accordance with Branch policies and guidelines. In such a situation he or she can express the relevant concerns to the committee. In the event they cannot be resolved the committee or the Director of Studies can refer the matter to the Executive Committee.