

International Ombudsman Institute (ed)

Richard Carver

A Mission for Justice

**The International Ombudsman
Institute 1978–2018**

 **VERLAG
ÖSTERREICH**



International Ombudsman Institute
Institut International de l'Ombudsman
Instituto Internacional del Ombudsman

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1978–2018

2018

Handbook

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ÖSTERREICH

Richard Carver, LL.M., Ph.D.
Oxford Brookes University

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Editor's preface

The aim of this project, to produce a history of the International Ombudsman Institute in celebration of the organization's 40th anniversary, was from its inception intended to give an accurate, historical account and not to be a work of promotion for the IOI. It was my pleasure to serve with the distinguished members of our Editorial Committee, staff members of the IOI, and the talented author, Richard Carver, in the successful completion of this important project.

Those who have been involved in the IOI know the drama of the history of this visionary organization. However, Richard Carver's research and interviews succeed in capturing the ideals, the commitments, the failings, the places where we "fudged," the uncertainties, the issues of continuing debates, and finally the courage and determination of numerous Ombudsmen who have created and sustained the IOI. Richard has brought together the forceful characters in our history and has successfully narrated the institution's momentous decision to move the Secretariat from Canada to Austria. Richard has succeeded in describing the evolution of human rights within our organization; the rise of the regions of the IOI; and the call for training initiatives. It is my hope that readers of this book will find fresh impetus for research and analysis. I also hope that the dramatic story of the IOI will engender commitment to create the bright future of Ombudsmanship to which this work is the prelude.

It must be the task of the next history of the IOI to dwell at greater length on the importance of the first woman President and the first African President, events whose significance is too current to assess as history.

Diane Welborn
1st Vice-President
International Ombudsman Institute

December 2017

President's and Secretary General's preface

Forty years ago, when the IOI was founded, the Ombudsman concept was just beginning to spread across the globe. Already, the diversity in the way the different offices would develop in response to local circumstances was evident. And yet, even from the outset, the core values driving the Ombudsman concept were apparent. The offices were independent, objective and free, and those values continue to sustain us today.

There are many reasons why Ombudsman Offices should work together. We can learn from each other's best practice. We can share training opportunities for our staff. We can support colleagues who are facing threats, and we can provide mutual support in a role which because of its independence, often needs to keep its distance from other public bodies. We can promote the further adoption of the Ombudsman concept and greater recognition by international organisations.

The Ombudsman concept has proved to be remarkably adaptable. Human rights have been a fundamental underpinning from the start, and now many offices are also National Human Rights Institutions. Anti-corruption is a key role for many Ombudsman Offices, not least in Africa and Asia. Offices like the one of the Ombudsman of Ireland also deal with freedom of information. Many fulfil the role of NPM according to OPCAT and seek closer cooperation with NGOs and civil society to join forces in the promotion and protection of human rights.

The public service context in which we work has also changed. Whereas in the past most if not all services in many countries were directly provided by the state, now many have been privatised.

Finally, the political context in which we work has changed utterly. Many countries have emerged from totalitarianism or colonialism and the Ombudsman Offices there are a key support for the growth of democracy and the protection of the rule of law.

In response to these changes, the IOI has also had to change and grow. The original excellent support from Alberta was very appropriate to a fledgling organisation, but the growing demands of the membership have

been very well served by the development of a permanent secretariat in Vienna.

The IOI is now a major provider of training. It brings Ombudsman Offices together regionally and globally. It has developed important partnerships with key international organisations. It acts purposefully to support offices which face threats for doing their jobs. It has set out policies in key fields such as privatisation and is developing a series of best practice papers. It has supported a major research project into the Ombudsman institutions around the world. It provides regular briefings on its own work and that of its members.

For the future, there will be new challenges to face. The rise of populism shows that we cannot take for granted the expansion of democracy and the rule of law within which the Ombudsman institution has thrived. The very diversity of Ombudsman institutions will challenge us to balance a desire for inclusivity with a commitment to holding firm to our original values. There are still parts of the world without any Ombudsman Offices and areas where our membership is not yet comprehensive.

The IOI will take on these challenges and seek to build on the strengths so well documented here. We will be seeking to have full formal recognition and partnership with all key international partners. We will continue to ensure that all offices can learn from the innovation and success of colleagues, and above all, we will aim to ensure that the Ombudsman concept contributes fully to better lives for all of our citizens, with full respect for equality, human rights and the rule of law.

We are grateful for all the achievements of the past 40 years but also for the occasional mistakes, because both are necessary to strive and grow in the future.

This excellent history charts the development of the IOI in parallel with that of its members. Our thanks are due to all of those involved in its creation. We always expected it to be of interest, but are delighted that it is not just a gripping story, but it is very well told. We hope you find it to be useful and inspiring.

Peter Tyndall
IOI President

Günther Kräuter
IOI Secretary General

International Ombudsman Institute (IOI)
December 2017

Author's preface and acknowledgments

This history has been commissioned by the International Ombudsman Institute (IOI) to mark the 40th anniversary of its foundation in 1978. I was honoured to be selected for this task, but also somewhat nervous. As a human rights researcher and academic, my guiding principle is always to follow the evidence. Yet an official history of an organization is, by definition, a celebration and a justification. How is it possible to square these different purposes? However, my greater concern, to be honest, was a different one. I knew the IOI well enough to be sure that it was a reputable and worthwhile organization. But might not an account of 40 years of board meetings, conferences and training events be a little *boring*? Soon after I began to research I realized that I need not have worried. The history of the IOI is punctuated by two dramatic and disruptive episodes that have shaped the organization's development.

So, having established that there is plenty of interest, even a whiff of scandal, in the IOI's past my initial reservation recurred. The history of an organization – especially an officially sanctioned one such as this – has an inherently teleological element.¹ That is, it will tend to see the past as a series of events that explain and ultimately lead up to the glorious present. I have done my best to avoid this approach. A close reading of the narrative that follows should show that the preceding 39 years were much more than a lengthy preparation for 2018. On one occasion, there was a very good chance that the IOI would not survive to mark its eleventh anniversary, let alone its 40th.

At the same time, and at the risk of contradicting the above, there does seem to be a very clear trajectory to the development of the IOI. The institute was, to a large extent, the brainchild of an American lawyer named Bernard Frank. His vision, which was most unusual for the 1970s, was that the ombudsman should be understood primarily as an advocate for human rights. It followed that the IOI would be an international human rights actor. This is a view that is readily embraced by the IOI today,

yet it would not have been shared by all the institute's past leadership and perhaps by even fewer of the members.

Another consideration is the difficulty of effectively assessing the most recent period of the IOI's history. While it is much easier to know *what* happened in 2017 than in 1987, it is much more difficult to evaluate its significance. While we understand the importance of events and decisions from a few decades back, the equivalent developments within the last decade are part of the continuous present, with most of the main actors still part of the IOI. Future generations will have to correct any misjudgements.

A note on sources

This history is mainly based upon two sets of sources.

First, I made very extensive use of the archives of the IOI, which extend back before the institute's foundation. These originate from several different sets of records:

- The records of the IOI administration in Edmonton up until 2009;
- Some personal documents and press cuttings donated to the IOI by the family of Bernard Frank;
- The records of Daniel Jacoby, executive secretary of the IOI in the late 1990s and early 2000s;
- The records of the Austrian board member of the IOI in the 2000s;
- The records of the IOI secretariat in Vienna since 2009.

I estimate that I consulted in detail some 500–600 documents, among many hundreds more that received more cursory attention. Direct references, including quotations, are cited in the endnotes, but in an effort to keep the academic apparatus to a minimum I have been relatively sparing in my citations.

These archives are also the source of many of the photographs included in this book, particularly those from the first half of the IOI's history. Alice Tai, former secretary and now honorary life member of the IOI, has provided many of the photographs that illustrate the period of the 2000s.

Citations from these archives are prefaced IOIA (for IOI Archives), with the name of the document as originally described.

The second source has been a series of 20 interviews with current and past figures from the IOI's history:

William Angrick	Günther Kräuter
Bruce Barbour	Marten Oosting
Diane Callan	Stephen Owen
Timothy Christian	David Percy
Fiona Crean	Linda Reif

Sir Brian Elwood
Roberta Jamieson
Frank Jones
Lewis Klar
Peter Kostelka

André Sasseville
Alice Tai
Peter Tyndall
Dame Beverley Wakem
John Walters

Some of these have been conducted face-to-face in Vienna, Edmonton and Vancouver but, given the far-flung locations of the institute's actors, most have been conducted using Skype, FaceTime, or even an old-fashioned telephone.

Acknowledgments

I have been given remarkable freedom to research and write this history in the manner that I have chosen. I answered to a small editorial committee under vice-president Diane Welborn, as well as to secretary-general Günther Kräuter. The editorial committee and the secretariat could not have been more helpful in facilitating my research, and enabling my travel and archival research. At the same time, no one has tried to influence either the direction or conclusions of my research.

I must register my thanks to Diane Welborn, Howard Sapers, and Tom Pegram, the committee that supervised me with a light touch, but also with crucial assistance when necessary. I thank the North American region of the IOI, which gave me a travel grant that allowed me to travel to Edmonton and Vancouver in 2016 to conduct primary research. Linda Reif kindly helped to coordinate my interview programme and make my visit to Edmonton both profitable and pleasant. Günther Kräuter and the Vienna secretariat under Uli Grieshofer have been immensely helpful. Permanent secretariat members Karin Wagenbauer and Ursula Bachler have been a constant support, as has Uli herself. Interns Carina Zehetmaier, Petr Kudelka, Miriam Baghdady, and Helena Aigner have been invaluable, particularly in the thankless task of scanning large volumes of documents.

I am also very grateful to all those past and present members and officials of the IOI who gave me their time to be interviewed. Everyone, without exception, was friendly, helpful, patient, and extremely generous with their time. If I have succeeded in capturing the flavour of the IOI in years past, then most of the credit must go to this group. I hope that I have not in any way misrepresented their views.

Although this is an official history, it is important to underline that both fact and interpretation (and the inevitable errors) are my responsibility, and not the view of the IOI or any of those who have helped me.

Richard Carver
Oxford Brookes University, December 2017

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Prologue

Bernard Frank had a vision. The Pennsylvania lawyer saw before most of his contemporaries that the ombudsman could be crucial to protecting human rights. He described the ombudsman as “one of the few institutions totally and completely devoted to making right if there has been a wrong against a person.”² More precisely, Frank saw the importance of international cooperation among ombudsmen, an ideal he promoted with increasing vigour from the mid-1960s onwards. To his colleagues this could seem more than a little obsessive. One early IOI board member described how a brief phone call from Frank could turn into a rambling hour of ombudsman trivia.³ Yet it was this vision, or obsession, that led directly to the formation of the International Ombudsman Institute.

Bernard Frank was an unlikely leader of the international ombudsman movement. Born in the coal-mining town of Wilkes-Barre in 1913, he travelled 60 miles down the road to study at Muhlenberg, a small liberal arts college in Allentown and thence to the University of Pennsylvania law school. He returned to Allentown to set up a legal practice in 1939, and there he remained until retirement. Except ... in common with millions of young men of his generation, and several of the other founders of the IOI, Bernard Frank fought in the Second World War. He gained four bronze stars as a master sergeant in the 94th US infantry division in Europe. His advocacy of human rights was clearly formed by this experience and his strong Jewish ideals of community service.⁴ So, while his professional life played out in a small area of eastern Pennsylvania, hundreds of miles from the nearest ombudsman, Frank’s vision was one of the triggers for a global ombudsman network. One of his frustrations was that his beloved ombudsman concept was so weak in his homeland. His experience in legal practice had shown him that the highly litigious but expensive US model for protecting citizens’ rights was far from perfect. The same board member whom Frank irritated with his lengthy phone calls described him as “an idealist” and “a very affable gentleman.”⁵

* * *

Frank's idea for an "international Ombudsman center" took shape in the late 1960s. To understand the visionary nature of the project, it is important to recall how small the ombudsman world was at that stage. The world's first parliamentary ombudsman, which provides the template for all that has followed, was created in the Swedish constitution of 1809, although it was preceded by other offices bearing the ombudsman name that would not meet modern standards of independence. The essential characteristic of the Swedish Ombudsman was that it was accountable to the legislature and an independent, non-judicial means for citizens to seek remedy for administrative malpractice. By the 1960s, three other Nordic countries – Finland, Denmark and Norway – had also established ombudsman institutions. In 1962, New Zealand became the first non-Nordic country to set up an ombudsman (Israel's State Comptroller had been established in 1949 but did not take on an Ombudsman role until 1971). The first New Zealand Ombudsman was another war veteran, Sir Guy Powles, who was also to be a central figure in the formation of the IOI. From New Zealand, the Ombudsman idea spread rapidly in the English-speaking Commonwealth. England and Wales established its Parliamentary Commissioner for Administration in 1967, while there were several provincial or state ombudsmen in Canada and Australia by the end of the decade. The United States was behind the trend. The first state ombudsman was established in Hawaii in 1969, but few others have followed. Even today the legislative ombudsman can only be found in a handful of US states and counties. There has been a proliferation of organizational ombudsmen in private companies, the media, and universities, a trend that had already begun in the 1960s. Yet Bernard Frank did not regard these as belonging properly within the ombudsman family and did not see a place for them in his proposed international centre. Hindsight tells us that there was a massive subsequent growth in the ombudsman phenomenon, throughout the following decades, accelerating in the 1990s. Yet, it took foresight to appreciate the potential importance of ombudsmen in the 1960s.

Bernard Frank first presented his proposal to the Bangkok Conference on World Peace through Law in 1969. Subsequently he pushed for greater formal collaboration through the ombudsman committees of both the American and International Bar Associations (ABA and IBA – both of which Frank chaired and both of which he was instrumental in forming).⁶ At this stage, however, these were no more than statements of intent. For them to become something more, Frank was to rely on Canadian support.

By the mid-1970s the ombudsman concept was spreading rapidly in Canada. There has never been a general legislative ombudsman at the federal level, but most provinces had ombudsmen by the time of the Canadian

Ombudsman Conference at Halifax, Nova Scotia, in September 1975. At this meeting, the Canadians endorsed Frank's proposal.⁷ However, another parallel institutional development was to be crucial to realizing it.

The IBA's Ombudsman Committee had established an International Ombudsman Steering Committee. The first aim of this committee was to organize an international conference of ombudsmen in 1976. The conference was to be held in Edmonton, the capital of Alberta and seat of Canada's first provincial ombudsman.

Chapter 1: Spreading the ombudsman idea – 1976–1988

Edmonton in the 1970s was still something of a backwater. The tar sands boom that would see Alberta emerge as one of the world's principal oil producers was still in its early stages (although the city's new ice hockey team was known as the Oilers). The provincial capital, an attractive city perched on a ravine above the North Saskatchewan River, had been a boom town in the 19th century gold rush and would become one again. Its assets had long included pre-eminence in research and education, notably through the University of Alberta, which boasts the oldest law school in Western Canada and one with a global reputation.

Alberta also had one of the first provincial ombudsman institutions in Canada, established in 1967. In 1974, Dr Randall Ivany was appointed to the office. With prematurely silver hair and immaculate dress, Ivany was a charismatic and well-liked member of the community. He had trained as an electrical engineer before studying theology and being ordained as a priest in the Anglican Church, becoming Dean of Edmonton in 1969. As a trusted and respected figure in the life of the province, he was an ideal appointment as ombudsman.

Randall Ivany found himself at the centre of moves to establish an international ombudsman centre because of the decision of the International Ombudsman Steering Committee, established by the IBA, to hold the first international conference of ombudsmen in Edmonton. The meeting, in September 1976, was universally regarded as a great success, for which much of the credit went to Ivany as host. The meeting was well-attended, although with a heavy North American bias. All the Canadian and US legislative ombudsmen were represented, as were the Australian states and New Zealand. From Europe, Sweden, Denmark, Finland, France and the United Kingdom all sent national ombudsmen, while equivalent or local officials came from Germany and Switzerland. From other parts of the world, representation was sparse, with Israel, Fiji, Papua New Guinea, Guyana, Mauritius, Tanzania and Zambia the only other countries repre-

sented. Academic participation was exclusively from North American universities. Bernard Frank was there on behalf of the International Bar Association – the driving force behind the initiative.

The event had a high public profile, with political guests from across Canada and, in particular, the participation of the Alberta Premier, Peter Lougheed. The quality of discussion was high, with exchanges of views between scholars and practitioners, in precisely the manner that Bernard Frank had envisaged.⁸

The question then was: what next?

For Bernard Frank and the steering committee, the aim of this conference was always to establish a permanent international structure for ombudsmen. In the final section of the conference, participants were invited to respond to the idea.

First, participants were broken into a number of regional groups – a process that was not itself completely straightforward, given the geographical imbalances among participants. George van Sertima, the Guyanese Ombudsman, pointed out that he was the only representative of the southern part of the Western Hemisphere, which made for difficulties in the breakout groups. The conference created a regional shape that was to be adopted initially by the IOI: Europe, North America and the “Southern Region.”

The first draft of the conference resolution recommended:

the establishment of an International Ombudsman Institute under a single international board of directors composed of practicing or former Ombudsmen. The Institute should embrace two study centres, one at the University of Stockholm and one at the University of Alberta, Edmonton. Any research funds for these centres should preferably be allocated by the international board of directors to commission studies directly useful to Ombudsman work. Both centres should be regarded as official repositories for the Institute and to this end will receive complete sets of reports and other useful documents from all Ombudsmen.

Two things are striking about this proposal. The first, evidently, is that *two* centres are envisaged. The momentum was all with Edmonton, which had hosted a successful conference with strong North American participation. Yet the respect for Sweden as the home of the ombudsman was extremely strong (reflected also in the overwhelming sentiment that one of the next two conferences should be held in Stockholm). The second point is that the steering committee saw the proposed institute as university-based – a view that none of the other recorded speakers at the conference challenged.

The reaction of the regional groups to this proposal was positive, but hardly overwhelming. Speaking on behalf of the European institutions, Lieselotte Berger from Germany reported agreement in principle, but then

threw all the detailed issues, such as mandate, location and composition of the governing bodies back to the steering committee. Sir Guy Powles, for the “Southern group” spoke at length on the proposal for a second international conference. On the “Institute or the Centre, the committee felt that everyone should express his own view.” Ulf Lundvik, the Swedish Ombudsman, was designated to write terms of reference for the steering committee. The Europeans nominated Randall Ivany to chair the steering committee, which comprised three representatives of each region. Justice Moti Tikaram from Fiji, Oliver Dixon from Western Australia and Judge Frederick Chomba of Zambia represented the Southern group. Nordskov Nielsen (Denmark), Aimé Paquet (France) and Lieselotte Berger were the European members. The Alaskan Ombudsman, Frank Flavin, and Arthur Maloney from Ontario joined Ivany from the North American group. The conference delegated broad powers to the steering committee to pursue the establishment of the institute, and explicitly encouraged it to involve Bernard Frank in its work.

Then came the first airing of a question that was to recur again and again through the IOI’s history: who is an ombudsman? It was Inger Hansen, the Canadian Correctional Investigator (or prisons ombudsman) who triggered the discussion, arguing that she herself should be excluded from membership at the next conference because she was appointed by the executive. (It is not entirely clear whether she thought she should be excluded from the conference or membership of the IOI, or both):

We’ve spoken about the need for independence from the judiciary, from political influence, and from the bureaucracy. If we put ourselves in the position of encouraging government of the day to appoint Ombudsmen, we are flying in the face of the concept. Now I do not wish this to be taken as a criticism of the Minister who appointed me. Far from it. He did it in order to establish the office quickly and to create it informally, but I think it is wrong in principle that the Ombudsman is appointed by the government of the day. And I would ask you to consider very seriously what that can do if we accept that as a definition of an Ombudsman. I think it’s wrong.

Hansen called for the conference to adhere to the definition offered by the International Bar Association, explicitly excluding ombudsman-type institutions appointed by the executive.

There was a heartfelt response from Judge Frederick Chomba from Zambia. Despite being a presidential appointee, he protested his independence (citing the security of tenure granted to him) and pointed out that he, along with other African ombudsmen, would be excluded if the IBA criteria were to be applied.

Chomba’s intervention prompted a scramble for a compromise. Arthur Maloney said that the IBA criteria only applied “generally speaking,”

while Inger Hansen stressed that she was not aiming for the exclusion of anyone, but underlined:

What I am concerned with is that Ombudsmen around the world face the basic principle that in order to be totally independent, Ombudsmen must be responsible to Parliament and not to the government of the day.

Bernard Frank, who was of course responsible for the IBA definition, argued that the purpose of the IBA definition was different from the aims of the proposed institute. The IBA's was a normative standard aimed at promoting the spread of the ombudsman concept (and even so this had not prevented several African institutions from affiliating). The purpose of the IOI, by contrast, was to draw together a number of existing institutions and hence could define an ombudsman "in more liberal terms." Sir Guy Powles took this argument a step further, arguing that the IBA definition was "inappropriate to describe a very important class of Ombudsmen," namely those appointed by the executive. He then added, confusingly, that he was not opposed to excluding executive ombudsmen. He argued that the IBA definition should be excluded from the resolution and full discretion given to the steering committee. Some, such as John Dillon from Victoria, Australia, shared Hansen's misgivings. However, the amendment proposed by Powles was passed:

the reference to the I.B.A. definition be deleted and in lieu of it the words, "In making this determination the Steering Committee shall be guided by the characteristics of a classical Ombudsman as understood by this Conference" be substituted.

Before it closed, the conference also had to address what turned out to have been a confected controversy. Earlier in the year, a number of African nations had boycotted the Olympic Games held in Montreal, after the organizers had refused to exclude New Zealand for its sporting contacts with apartheid South Africa. The Edmonton press had reported tensions between the African delegates at the ombudsman conference and Sir Guy Powles. Frederick Chomba raised the matter during the closing ceremony:

[W]hen I or even my colleagues from Africa have had a chance to be near Sir Guy, we have exchanged greetings; we've conversed; we've chatted; and there is amity as far as I am concerned. There is no question of there having been any strain between Sir Guy Powles on one hand or ourselves.

Powles, who in the previous discussion on eligibility for membership had gone out of his way to defend the inclusion of the African ombudsmen, responded in kind, thanking Chomba for raising the matter:

I feel it's particularly unfortunate in a way that this press should have singled out the names of the countries, the great countries, of Tanzania and Zambia because in both those cases I've been honoured with personal friendships with my colleagues.

Powles had been a dominant figure throughout the conference, as well as playing an extremely important role in disseminating the ombudsman concept. An elegant and patrician figure, habitually wearing a bow tie, Powles came from a prominent military family in New Zealand. His own military service in the Second World War was followed by a distinguished diplomatic career, before receiving a knighthood from Queen Elizabeth II and being appointed Ombudsman in 1962.⁹ The conference acknowledged Powles's role with a unanimous concluding resolution. Moving the motion, John Dillon from Victoria said that "if it had not been for Sir Guy, we would not be occupying the offices we hold today."

Yet, if Powles was the dominant public figure and a crucial actor in the growth of the ombudsman movement, seated quietly in the conference was someone who was to have a far greater impact on the development of the IOI. He was not an ombudsman, nor a human rights activist, but a tax lawyer. Frank Jones QC was dean of the law faculty at the University of Alberta. The potential international ombudsman network offered a great opportunity to his school.

* * *

Frank Jones and his colleagues in the law faculty were already deeply interested in the idea of the proposed international centre before the Edmonton conference. For them, the conference was a first exposure to the ombudsman world, convincing them of the need for the centre and giving rise to a concrete plan. Jones's plan was there before the steering committee when it met in Paris in May 1977.¹⁰

The University of Alberta's proposal set out six objectives for the proposed organization. (The name was still not firmly decided upon, with the minutes of the Paris meeting referring to the World Ombudsman Institute and the University of Alberta document simply called it the Ombudsman Institute.)

- Catalogue and store publications and other documents from and about the Ombudsman world;
- Organize periodic seminars "to provide academic training to current staff members working for an Ombudsman;"
- Research on the impact of Ombudsman institutions;
- Finding funds to support long or short-term research projects;

- Developing an “Ombudsman-in-residence programme” at the university for Ombudsmen who were retiring or on sabbatical;
- Publishing an Ombudsman journal.

Jones’s proposal takes account of other work being done in these areas – notably by the ombudsman committee of the IBA and various academic researchers. It also contains a rather subtle and advanced discussion of the relationship of the core work of the ombudsman – handling individual complaints from members of the public – to systemic human rights problems, drawing upon a speech by the Israeli State Comptroller, Itzhak Nebenzahl, at the Edmonton conference. Jones argued that a research programme at the institute could help individual ombudsmen identify underlying human rights issues that were not being addressed in handling individual complaints.

The document proceeds on the assumption that the Institute will require a “full-time Executive Director and several assistants who will respond to the policy guidelines enunciated by a Board of Directors.” The assumption was a reasonable one, although the IOI has in fact had such an executive director for only a few years of its life – let alone “several assistants.”

The law faculty had a number of things to offer as host of the institute. First, it had office space, estimated in Jones’s document to be equivalent to \$10,000 a year in rental value. The faculty would immediately make available \$5,000 to buy books for the institute. Clerical and other staff would be available “until such time as the Board of Directors of the Ombudsman Institute hired their own full-time staff.” The faculty also had computers. In the 1970s, information technology might not have seemed an obvious requirement for a new non-governmental organization, but universities, then as now, were in the vanguard in using these new resources. Perhaps most temptingly, Jones estimated that the faculty would be able to raise some \$500,000 in funding for the new institute over the first five years. In addition, there would be direct subsidies from the ombudsmen themselves, in the form of their subscriptions and a commitment to pay their own travel expenses.

The Paris discussion was somewhat curious in that participants seem to have paid very little attention to the actual content of the University of Alberta proposal.¹¹ Ivany, in the chair, opened with a presentation of Jones’s proposal, updated to inform the committee of the Canadians’ progress in securing \$100,000 a year from the Donner Foundation, of continuing negotiations with the Ford Foundation, and the fact that the faculty had now drawn up an annual budget of \$127,000. The committee was clearly impressed by the proposal, but was concerned first with whether

it had the authority to proceed with establishing the institute. (It did – the resolution in Edmonton was clear on that.) Secondly, the committee was anxious to keep open the possibility of setting up an office in Stockholm. Ulf Lundvik, the Swedish Ombudsman, had explored the matter with the government. The reaction, if not negative, seems to have been no more than lukewarm. Ivany, meanwhile, had been pursuing the possibility of a “third world” ombudsman centre. Given the poor representation of the global South at Edmonton in 1976, the available contacts were few. Ivany particularly explored the proposal with Colonel Kitundu, the Tanzanian representative at the Edmonton conference. It had become quickly apparent that a third world centre would require a substantial input of resources from the global North. Bernard Frank had told Ivany that there would probably be interest from US universities, but no offers were forthcoming. The committee was left with the University of Alberta proposal.

The meeting concluded by accepting the proposal from Frank Jones and his colleagues, but left open the options of Stockholm (or elsewhere in Europe) and the “third world.” While Ivany was clearly steering the committee towards the Edmonton option, it was apparent that others wanted Stockholm. The problem was that there was no Swedish offer on the table, so the committee arrived at the compromise of accepting the Alberta bid but moving towards another one or two centres for the institute. (Time would show that the idea of having two or three centres was wildly unrealistic, but the possibility never actually arose.)

The other bone of contention in the discussion of the institute was how it would be financed. Some committee members, notably Arthur Maloney from Ontario, argued that the secretariat had to be funded by the ombudsman institutions that constituted the membership. Others, including the French host, Aimé Paquet, argued that they could not afford this out of their own budgets. Lieselotte Berger said that it was possible that the legislature would vote the necessary funds to support the institute, but that it would require strong and well-reasoned arguments. Lundvik explained that if the Swedish government were to support an office of the institute in Stockholm, this would entail a financial commitment. Aside from any sentimental notion that Sweden was the home of the ombudsman, this was an important selling point. Meanwhile Ivany dangled the possibility that the province of Alberta and the Canadian federal government might be persuaded to finance the Edmonton option.

The question of funding was tied to the governance of the new institute. Some participants were unhappy with the idea that the governing board would consist of representatives of ombudsman institutions that had *not* made a financial contribution to the organization. Maloney warned that the institute would not belong to the ombudsmen if they did not pay for

it, while Itzhak Nebenzahl argued against “representation without taxation.” No final decision was taken on this issue, since the International Ombudsman Steering Committee stood in for the board until the next international conference. On funding, the committee simply refused to take a position on the basis that its expertise was “in the field of coordination and professional advice, but not in that of funding.”

The committee’s other business was more easily accomplished. It was tasked with choosing a venue for the second international ombudsman conference in 1980. The options were Stockholm, Jerusalem and Sydney. Representatives of the three potential hosts each made a presentation: Ulf Lundvik, Itzhak Nebenzahl, and Oliver Dixon.¹² After a fairly convoluted discussion about the appropriate voting system to be used for selection, Jerusalem was chosen by a large majority in a secret ballot.

Then that same question was asked: who is an ombudsman? As in Edmonton, there were two polarized positions. One, argued by Frank Flavin from Alaska, said that the conference should be as all-inclusive as possible and include municipal and specialized ombudsmen. Oliver Dixon disagreed. He had no problem with municipal ombudsmen, but otherwise those attending should be at national, provincial or state level. Arthur Maloney suggested that the criterion should be appointment by a legislative body. However, as in Edmonton, some of those present, including Moti Tikaram from Fiji and Aimé Paquet, pointed out that they themselves would be disqualified if this condition applied. Maloney tried again and offered the following definition:

An office created by law whose incumbent is an independent, high-level public official with responsibility to receive complaints from aggrieved persons against agencies, officials and employees of government or who acts on his own motion and has the power to investigate and recommend corrective action and issue reports.

This was about the broadest possible definition of a public ombudsman body, which met with general approval from the committee. Ivany, however, objected on the basis that this would exclude media ombudsmen – which was one of the intentions. Even some of those who accepted Maloney’s definition, such as Nordskov Nielsen from Denmark, still felt that the committee should have the discretion to invite specialized ombudsmen. It was agreed that Ivany as chairperson and Nebenzahl as host would have discretion on invitations, while being generally guided by Maloney’s proposed definition. A credentials committee would consider any disputes. As in Edmonton, the issue was fudged.

* * *

The vote in Paris was a less than ringing endorsement for the Edmonton proposal. A majority of the steering committee still longed for an institute in Stockholm and/or somewhere in the global South. The proposal from the University of Alberta was adopted in the absence of an alternative, yet it is clear with hindsight that it was indispensable to the launch of the IOI. Neither the Swedish nor the “third world” options came close to materializing. Of course, an international coordinating body of ombudsmen would presumably have emerged in some form after the Jerusalem conference in 1980 or Stockholm in 1984. But it would not have been the IOI as we recognize it now.

Ivany and Jones took their mandate from the Paris meeting and pressed forward. In October Ivany set off for New Haven, Connecticut, for a meeting with Nebenzahl and Frank, while Jones and his colleagues prepared the application for letters patent to incorporate the International Ombudsman Institute under the Canadian Corporations Act.¹³ The letters patent were granted in February 1978, with Jones, Ivany, and Peter Freeman, professor and librarian at the law faculty, as the three directors.¹⁴ The by-laws submitted when the company was registered allowed for 11 voting members, which constituted the board of the IOI. In addition to Ivany, Jones, and Freeman, these members were Myer Horowitz, the Vice-President (Academic) of the University of Alberta, Ulf Lundvik, Bernard Frank, Moti Tikaram, Oliver Dixon, Joseph Bérubé from New Brunswick, Beatrice Serota from the United Kingdom, and Jacques Vontobel from Zürich.¹⁵

The last two named were to become important figures in the early years of the IOI. Baroness Bea Serota,¹⁶ the daughter of Jewish refugees from central Europe, was a politician active in local government in London who was highly respected for her unassuming efficiency. She became a minister in the Labour government of the 1960s and, by the late 1970s, was the Local Government Ombudsman. If Bea Serota rose from humble origins to positions of respect and recognition, Jacques Vontobel had to overcome extraordinary disadvantages. He too was a local figure, as Delegate for Complaints of the city of Zürich, the first ombudsman in the whole of Switzerland. Vontobel was born without hands, creating massive obstacles to the most basic physical tasks. A native of Zürich, he had studied law and political science there and become a judge.¹⁷ In part because of his disabilities, his wife Verena was a constant companion (and also, with her knowledge of English, an unofficial interpreter). The Vontobels were immensely popular participants in board meetings and international conferences over the first decade or so of the IOI's history.¹⁸

The board was not to meet until later in the year, however. In May, Sir Guy Powles travelled from Wellington to Edmonton to take up his post

as the first ombudsman-in-residence. Before he departed, he sent a letter to a range of existing ombudsman institutions, seeking their views on the establishment of the IOI and advice on its priorities.¹⁹ Powles's letter set out various of his own ideas on IOI priorities, so to some extent the responses he received are reactions to these. Nevertheless, this informal sounding offers an interesting snapshot of attitudes towards international cooperation among ombudsmen in 1978. While there was a fair amount of enthusiasm for the idea of the institute – most will presumably have voted for it in Edmonton two years previously – there was also some scepticism that the new body could achieve its aims. One respondent was “[n]ot really convinced as to real necessity for Institute so far as concerns the practising Ombudsman.”²⁰ Another welcomed the institute and its aims because of the danger of complacency among existing institutions, although the respondent was not sure if the proposed programme of work for the new body was sufficient to achieve this. A third was

Less than enthusiastic about proposed Institute Cannot share Bernard Frank's optimism that a "University Centre is an excellent vehicle to attract Governmental and non-Governmental funds" ... not opposed to concept of establishment of an "Ombudsman Institute" but cannot recommend to my Government that it make any substantial contribution.

Another respondent wrote:

I do see problems ahead for the Institute ... I can see the Institute being torn in two directions ... by the academics who will probably want to carry out all sorts of research ... by the ombudsmen themselves who would see the prime function of the Institute as a repository for information coupled with an effective means of disseminating it ...

But this commenter nevertheless saw “no reason why both functions cannot be undertaken.” This respondent, a North American, was also cautious about the issue of support from the established ombudsman institutions to the “third world:” “[W]e have a duty to give whatever assistance is requested ... but our experience to date has not indicated any notable co-operation.”

Another respondent, who was from the global South, expressed reservations from a slightly different perspective:

Ombudsman was in theory supposed to be not much more than an average citizen who is to fight against the complexities of bureaucracies and unjust systems of various jurisdictions. To set up an International Ombudsman Institute we would require substantial capital and experts to administer it. I wonder if I would, in conscience, be able to ask Government to spare me the badly needed money, however small, to put it towards such an organisation. Some may argue that richer nations could contribute on our behalf, yet would we be able to enjoy

the benefits that would be accrued to the institute and at the same time maintain our human dignity, knowing that we are reaping what we have not sown?

My humble opinion is that we met for the first time in 1976, and it would have been better if we had had other meetings; and then had ample time to share ideas we gather from the finest of human beings with our various governments and get their support; then we could have ventured into setting up various ancillary [sic] institutions. Some of us are so pressed that we have not even started to brief people in our governments as to merits or demerits of the first international conference.

The weight of responses was very much in favour of establishing the institute. Powles seems to have been somewhat selective in the quotations cited in his report, in order to highlight challenges facing the new organization. With the benefit of hindsight, many of the remarks seem astute. For example, from both the global North and South there was a clear wariness about the wisdom of a system in which the former support the latter financially. Respondents were favourable to the research function of the institute (although they did not always agree with Powles's suggested priorities), but stressed that this must be in areas that would be of use to "hard-pressed ombudsmen" and not to academic fads and fancies. Others were sceptical that the institute would attract funders.

The board finally met in September 1978 in Edmonton. It elected Ulf Lundvik as president, Bernard Frank as vice-president, and Peter Freeman from the University of Alberta as secretary/treasurer.²¹ (Freeman resigned from the board on leaving the university in 1980.²² Frank Jones took his place as treasurer, a position that thereafter and until 2009 was held *ex officio* by the dean of the law faculty.) Much of the meeting was taken up with discussion of practical matters, such as the appointment of auditors and the proposed by-laws, with minor amendments to Powles's draft. (Somewhat surprisingly, since he was in Edmonton, Powles himself did not attend.) From Freeman's rather sparse minutes, there seems to have been little discussion of the future programmes of the institute. Bea Serota made an interesting point about using regional seminars for the purpose of public education "to reach the lower socioeconomic classes of society and consumer groups." Myer Horowitz strongly agreed, but the theme more or less disappeared from discussion thereafter.²³

So, the IOI was up and running. It had a board and officers, it had legal status, it had a headquarters, and it had guarantees of funding for three years – enough at least to sustain organizational continuity, if not all the activities that had been envisaged. Sir Guy Powles had been a good choice as the first ombudsman-in-residence, since he had created a flurry of activity, with proposals on future activity, correspondence with ombudsman institutions, and a small research project on the relationship between om-

budsmen and human rights commissions. There is little sense that this work greatly influenced the future activities of the IOI or that it was very closely coordinated with the new secretariat. Powles was not the easiest man to work with and his relations with the Canadians were not great.²⁴ Nevertheless, the board acknowledged Powles's contribution with gratitude and he continued to be seen, along with Bernard Frank, as one of the founding fathers of the institute.

The ombudsman-in-residence experiment was not prolonged for long. Powles was followed in Edmonton by Ulf Lundvik, at the IOI's expense, and then by Ramawad Sewgobind, the Mauritian Ombudsman. By this point it was judged not to be making a contribution and was quietly dropped.²⁵

The IOI as a human rights organization

Back in the 1970s, the idea that the ombudsman should be seen as a human rights actor was a fringe opinion. This was for the perfectly good reason that none of the ombudsman institutions in existence had a human rights role written into their mandate. Of course, it could always have been argued that maladministration – an improper decision, an administrative error, or even corruption – might have an impact on the human rights of those affected, but the reality is that the ombudsman's role in addressing these issues was simply not framed in human rights language. This is hardly surprising since, although the global human rights system was initiated in the late 1940s, it was not institutionally operative before the 1970s (or even the 1990s in most instances). States such as Canada, New Zealand and Australia, where many of the early ombudsmen were located, developed parallel commissions with an explicit human rights mandate. It was not until the 1990s that large numbers of new human rights ombudsmen emerged.

In this context, Bernard Frank's view that ombudsmen were human rights actors was unconventional. This is not to say that anyone in the IOI was opposed to human rights. Yet these were not seen as being among the aims of the institute, which was rather an association aimed at the professional development of the ombudsman. These differing views would, however, lead to controversy on occasions, such as the 1980s debate over relations with South Africa described in Chapter 1. For those who viewed the IOI simply as a professional body of ombudsmen, there was no obstacle to admitting the ombudsman of the sham state of Bophuthatswana as a member. Those who saw the duty of the IOI as to uphold human rights were

likely to view an official from a South African homeland as part of the problem, not part of the solution. This faction was still a very small one in the 1980s, if a little stronger than back in 1978.

The big change was driven in large part by the emergence of a new type of ombudsman with a specific human rights mandate. The two Iberian ombudsmen, Spain's Defensor del Pueblo and Portugal's Provedor de Justiça, were pioneers, as was Poland's Commissioner for the Protection of Civil Rights. Successive Spanish ombudsmen were particularly active in the IOI. These three institutions dating from the 1980s were followed in the next decade by large numbers of new ombudsmen, mainly in Latin America and Eastern Europe, with a clear human rights mandate. Stephen Owen, IOI president from 1988 to 1992, was the first of the organization's leaders apart from Bernard Frank to perceive the importance of this change. Other leading members of the 1990s, such as Marten Oosting and Roberta Jamieson, thought along similar lines and there was a discernible shift in emphasis. Yet other IOI leaders did not. Sir John Robertson (IOI president from 1992 to 1994) and Sir Brian Elwood (1998–2002), for example, were both New Zealand ombudsmen with a traditional mandate and traditional views about the primacy of the classical ombudsman.²⁶

The decisive shift came under the presidency of another classical ombudsman, Bill Angrick, but one who had since the 1980s been sensitive to the human rights aspects of the ombudsman's role. The decision to create a new constitution and new secretariat model facilitated the clear transformation of the IOI into an international human rights organization.

When questioned about the priorities of the IOI in the future, the present secretary general, Günther Kräuter, reeled off a list of issues that fell clearly under the human rights heading: equipping member institutions for their torture prevention mandate; defending members under threat in Poland and South Africa; and developing a refugee protection network.²⁷ Even the second of these, which would seem an unexceptionable role for a professional association, was not explicitly understood to be the IOI's function in the early years and even later was only really championed by ombudsmen, such as Daniel Jacoby from Quebec, who had themselves been under threat.

That Kräuter should answer in such terms is not really surprising. In its current by-laws, adopted in 2012 at the Wellington conference, the first purpose of the IOI is established as "respect for human rights and fundamental freedoms."²⁸

It was only towards the end of 1980, after a full two years of existence, that the International Ombudsman Institute was finally unveiled to the world at the Second International Ombudsman Conference in Jerusalem. It should be remembered that at this stage the conferences were still organized by the international steering committee, which predated and was separate from the IOI. So, while many of the participants would already be IOI members, or at least have had some contact with the new body, they could in principle have arrived in Jerusalem in complete ignorance of the IOI.

There were several speakers at the IOI's launch.²⁹ Ulf Lundvik, as president, was master of ceremonies and also presented commemorative scrolls to a number of distinguished figures from the ombudsman movement. Frank Jones, Randall Ivany, and Itzhak Nebenzahl all spoke, along with the Canadian Ambassador to Israel, Joseph Stanford, and Professor Raphael Mechoulam, Rector of the Hebrew University. But the one speaker who was particularly inspired by both place and occasion was Bernard Frank. The IOI's vice-president had imagined this moment for more than a decade and was clearly overwhelmed that it should have come in Jerusalem, which he called "the spiritual capital of humankind." He gave an eloquent justification of the role of the ombudsman, and of the IOI. In doing so, he made it clear that the role of the ombudsman extended far beyond the mere righting of administrative wrongs:

The governed find themselves increasingly suffering harm and wrongdoing from those who serve as the governors. The citizen, unable to deal with bureaucratic government, sees a widening gap. Alienated and cynical, he says that one cannot fight the halls of power

The men and women who serve as ombudsmen in the democratic world are of many faiths, beliefs, races, and colors, but they are united in heeding the passionate biblical cry in Deuteronomy, "Justice, justice shalt thou pursue" and the mighty words of Amos, "Let justice roll down as waters and righteousness as a mighty stream"

Lest his audience conclude that he was getting too carried away with the biblical references, he also cited his own colleagues, Randall Ivany, who described the ombudsman as the "voice of the voiceless," and Arthur Maloney, who talked of "the ordinary man's corridor of access to the seat of power."

Frank's powerful speech had a dual emphasis. On the one hand, rights are worthless without the existence of bodies empowered to implement and enforce them:

[H]uman rights and fundamental freedoms, so essential to the dignity of humankind, are only words and phrases in impressive written documents – constitutions, bills of rights, charters, laws, and declarations – unless there are agencies

such as the ombudsman to breathe life and meaning into these writings and guarantee to the people the rights set forth in those documents.

On the other hand, he was concerned that expectations of the capacity of ombudsman institutions should not be too great. However, the ombudsman, unlike other important mechanisms such as the judiciary, is “one of the few institutions totally and completely devoted to making right a wrong against a person.”

Frank concluded:

Here is the institute. It exists. It is alive. It has plans and hopes and faith. And so I say to all of you here – join with us in the building of the International Ombudsman Institute in its mission to promote the concept of ombudsman and to encourage its spread throughout the world.

There was some wisdom in waiting a couple of years before this public unveiling. Ombudsmen participating in Jerusalem could be presented with some real achievements. The IOI had established a database on ombudsman institutions and collected substantial amounts of material on the various institutions, as well as a bibliography. Several issues of a newsletter had been published (and the first issue of an academic journal was soon to appear). The IOI had conducted research on behalf of a number of different bodies, including five ombudsmen and two national governments, the Netherlands and Ireland, who were considering establishing their own institution.³⁰

However, there were other obstacles to the IOI's development that, not surprisingly, were not a focus of discussion in Jerusalem. By this point Peter Freeman had moved on and his role as executive director had been taken by Randall Ivany. One minor disadvantage was that relations with the law library became slightly more complicated; Freeman had been both an IOI official and the head librarian.³¹ The staff envisaged had never been hired and consisted at this stage of one graduate student working part-time. The underlying reason, of course, was money: the riches that the steering committee and then the board had expected simply did not materialize. There was no money from the Donner or Ford foundations, although the IOI did succeed in raising funds from the provincial governments of Alberta and Ontario alongside the principal donor, the Alberta Law Foundation. At the 1980 board meeting in Stockholm, Ivany proposed the creation of a capital fund that would endow the IOI in future – a sensible idea, but at present income was barely covering the annual budget. Jones argued that the ombudsmen themselves needed to contribute more – a reiteration of Nebenzahl's “no representation without taxation” argument that was fine in principle but overlooked the fact that many of the IOI's constituent members were no better placed financially. Jones was

worried, and at the 1981 board meeting in Edmonton asked the minutes to record: “If we are not in a better position next year I cannot be party to having us go into bankruptcy.”³²

* * *

Despite all the practical obstacles, the IOI pushed ahead with its programme of work. Funding constraints meant that progress was inconsistent, with actual activities not necessarily corresponding to plans when funding was not forthcoming – but such is the fate of many organizations dependent on grant funding. As Frank had indicated in his speech in Jerusalem, the institute had quickly set about some of the key tasks, such as developing a database of institutions and a bibliography (and where possible a library) of works related to ombudsmen. In his time in residence in Edmonton, Ulf Lundvik was critical of the bibliography and library, which he saw as having a heavy anglophone bias.³³ With fluency in French and German, he set about rectifying this deficiency.

Bea Serota headed a committee devoted to research. The membership of this committee was entirely European, with only Jones and Ivany from the secretariat represented ex officio. This was a slightly strange arrangement, given that a major part of the rationale for having the Institute at a university was the potential research support. In practice, however, Serota’s committee came up with interesting and innovative ideas, which sometimes were able to raise research funding, as with a study of the role of ombudsmen in the field of health care.³⁴

The launch of the *Ombudsman Journal* in 1981 was an important step towards one of the key early aims of the IOI – a working link between the ombudsman world and academic scholarship. The concern of some ombudsmen at the outset had been that such scholarship might run the risk of being abstruse and over-theoretical, ignoring the practical problems facing ombudsmen themselves. For the institute’s members, the academic contribution was only relevant if it offered potential solutions to these problems. The concern turned out to be misplaced. The series of occasional papers that began in 1979, followed by the journal itself, were eminently practical and often well-researched. If anything, the opposite criticism might apply: there was little in the way of daring original thinking. There was, however, a serious attempt to address issues such as how to assess the impact of ombudsmen’s work.

Probably the most important aspect of the IOI’s work was promoting the institution of ombudsman and providing support to existing institutions, particularly through training. Unfortunately, this was also the most expensive set of activities and was hence at the mercy of funders.

The international conferences remained throughout the 1980s in the hands of the steering committee and were hence not formally part of the IOI itself. Nevertheless, they were an important quadrennial focus, in Jerusalem (1980), Stockholm (1984), and Canberra (1988). Other events were organized where possible. In 1984, for example, Ivany succeeded in securing project funding from the Canadian International Development Agency (CIDA) to train officials of the Nigerian Public Complaints Commission. This was a more extensive project than most during this period, consisting of funding for Nigerians to attend the Stockholm conference and a staff seminar in Helsinki, as well as visiting Canada to tour ombudsman offices. Then Ivany and a staff member of the Alberta Ombudsman travelled to Nigeria to deliver training.³⁵

* * *

Among the training and promotional activities it undertook in the early 1980s, the IOI found itself entangled in the question of the best way to respond to the institutionally racist apartheid regime in South Africa. It will be recalled that the Canadian media tried, unsuccessfully, to trip up Sir Guy Powles over the issue at the 1976 Edmonton conference. For a human rights organization the question was whether to engage with democratic, anti-racist forces within South Africa or to participate in the international boycott of the country. A critical mass of IOI members in these early years were from the Commonwealth, which had become one of the international organizers of the boycott movement. If, however, the IOI chose to engage rather than boycott, with whom should it engage and who should make that determination?

The IOI first dipped its toe into these troubled waters when invited to do so by the Ombudsman Committee of the IBA.³⁶ Its secretary, Alex Weir, was a close associate of both Ivany and Frank. In 1982, he invited Ivany to give the keynote address at a conference in Stellenbosch, organized in response to a request from the Association of Law Societies of South Africa, which was interested in determining whether South Africa should establish an ombudsman institution. One of those who objected to the IOI's participation was the Iowa Ombudsman (and future IOI president), William Angrick II, who wrote a strongly worded letter on behalf of the US Ombudsman Association urging Ivany not to accept the invitation.³⁷ This had no effect. The conference had 110 participants, mainly local, with a distinguished international cohort, including Ulf Lundvik. Weir described the IOI's involvement as "a major supportive role," beyond Ivany's speech. Weir's report of the event does not ignore the underlying problem with establishing an ombudsman within a systemically undemo-

cratic context: “Could a truly independent-minded Ombudsman do his job without incurring a level of government displeasure that would make his job impossible?” Mainly, however, Weir – like Ivany in his reported remarks – laid greater emphasis on the potential of a classical ombudsman in representing South Africans with “no barrier of race, class or creed.” Weir cited an (unnamed) black participant who was enthusiastic about the creation of an ombudsman because of the lack of legal political channels. It was left to one of the international participants, Walter Haller from Zürich, to point out that an ombudsman would not be able to change unjust apartheid laws.³⁸

The conference was also notable for the participation of a South African ombudsman – Christopher Milton of Bophuthatswana, described as having been recognized by the IOI as a classical ombudsman. Milton, a distant descendant of the poet, was, like many of the participants in the conference, a liberal critic of the apartheid system. Unfortunately, as an employee of the nominal state of Bophuthatswana, he was an employee of that very same system. Apartheid rested on the fictitious premise that the various black African population groups were citizens not of the Republic of South Africa, but of various supposedly independent “homelands” or “Bantustans,” including Bophuthatswana. This was the device whereby black South Africans were deprived of democratic representation. Additionally, the homelands were themselves corrupt, undemocratic, and unrecognized by the international community. Weir, in his report, was being either ignorant or disingenuous when he remarked that “the residents of Bophuthatswana are fortunate in having an opportunity of appealing to their newly-appointed Ombudsman for assistance.”³⁹ It is unclear who from the IOI made the decision to “recognize” Milton, but it was presumably Ivany, possibly in consultation with the Edmonton-based Weir.

Others took a different view of the Bophuthatswana Ombudsman. The credentials committee for the third international conference, in Stockholm in 1984, refused to accredit Milton. Ivany and Weir were furious. Ivany wrote that it was “a sad day for the international Ombudsman movement.”⁴⁰ He argued that the question of the political status of Bophuthatswana was irrelevant and the only consideration was the founding statute of the office, which in Ivany’s view passed muster. “We in the Ombudsman movement make much of the fact that we are above politics in our day-to-day work, yet what is happening now makes a mockery of the statement.”⁴¹

In 1987 at Edmonton, Bill Angrick, now on the board, seconded by Daniel Hill from Ontario, proposed a motion calling for a “a very strong letter expressing dissatisfaction with the self classification of Bophuthatswana as being a member of the Institute.”⁴² The discussion had been

prompted by criticism from the Commonwealth Legal Secretariat in London that the Bophuthatswana Ombudsman was a member (described as such in his 1984 annual report). While this particular case had clearly arisen because of the status of the South African “homelands,” it did raise other issues about what constituted membership. Bernard Frank had responded to the CLS that Christopher Milton only received materials from the IOI and had no voting rights. The question then was whether such institutions or individuals should be described as subscribers rather than members. Ivany was clearly irritated by the proposed motion and “did not comprehend how the President could, in all conscience, write such a letter,” while Geoffrey Kolts, the Australian Commonwealth Ombudsman, noted that “he did not see how it is possible to write such a letter, objecting to Mr Milton describing himself as a member if he is, in fact, a member.”

The motion was put aside until the Bophuthatswana annual report could be consulted. The report does indeed state that the ombudsman was a member of the IOI, which was not unreasonable, given that he was also included as an institutional member on the IOI’s own 1987 membership list, which curiously was not referred to in the discussion. Some irritation may have been caused by the fact that the annual report referred to Milton’s exclusion from the Stockholm conference.⁴³

The discussion on the motion revealed differences, even among those who supported Milton being rapped over the knuckles. Angrick, the proposer, did not want to expel Bophuthatswana, but wanted it made clear that Milton could not represent himself as a member. His seconder, Hill, took a much stronger line. Bophuthatswana had “legislated racism and has no business in the Ombudsman community.” It should be expelled, he said, a position supported by Anthony Mbelwa from Tanzania. Dr Daniel Hill was a formidable ally. He was Ontario Ombudsman and had formerly been the provincial human rights commissioner. Hill’s story was a remarkable one, having been born black in the American South and obtaining a degree from a historically black university. He then moved to Canada, where he studied for a Masters and PhD in sociology, beginning a career in public service, of which the office of ombudsman was culmination. He was always clear that the ombudsman should be seen as a human rights institution.

George Green from Jamaica argued a slightly softer position, with the support of Sir Moti Tikaram. Bophuthatswana was not a recognized country and hence could not be accepted as a member, but he would not deny Milton access to the IOI’s materials. Bernard Frank was also inclined towards this position. On the other side, Kolts asked whether the IOI actually had the power to expel Milton from membership (to which the answer was no, but it could refuse to renew his subscription when it ex-

pired). The Spanish Ombudsman, Joaquin Ruiz Gimenez, put forward a different argument. He said that Milton was “fighting for human rights, and he is against discrimination and in favour of fairness.” This was what concerned Frank Jones as well:

... if the office is fighting against racism and maybe doing something to further what the Institute stands for then perhaps we do want this membership. If the Institute is going to deny him on the basis that this is not the kind of office that the Institute wants, then that is all right, but that he would want to know what the office actually does and if it is fighting apartheid policies he would be supportive of keeping him.⁴⁴

However, the board endorsed the motion by nine votes to three, with one abstention.

What is most striking in retrospect is a certain political naivety on the part of those who argued in favour of the Bophuthatswana Ombudsman’s membership. They were happy to accept Milton’s own evaluation of his role without any assessment of the reality of the homeland state. Hence, they were able to see the ombudsman as a potential bulwark against apartheid and racism. On the other side of the debate, although there were differences about how far the IOI should communicate with Bophuthatswana, all stood on the principle that the homeland was unrecognized and illegitimate. Whether they would have taken the same positions a decade later, when the question of the Taiwanese Ombudsman arose, is an interesting question to which we cannot know the answer.

Ultimately, the Bophuthatswana problem disappeared of its own accord. In 1992, Milton was still listed as a representative of the IOI, but by that point the democratic transition in South Africa was well under way.⁴⁵ Within two years Bophuthatswana had ceased to exist.

It was only during this final phase that the IOI engaged with South Africa in a fully professional manner. In September 1993, Professor Linda Reif, by then the IOI’s publications editor, wrote a briefing setting out a policy for the IOI’s engagement with the South African transition, including on the homelands.⁴⁶ The unspoken subtext of the policy briefing was the danger that the IOI might be perceived as being in favour of the maintenance of the Bophuthatswana Ombudsman, which was to be swept away in the new unitary constitution with its mechanisms for protecting the human rights of all South Africans.

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Effectiveness

The question of effectiveness is one that concerns all thoughtful Ombudsmen. What is an effective Ombudsman and how is it possible to evaluate or measure this? The question was addressed from a very early point in the IOI's history in occasional papers and conference discussions. While some of the discussion addressed more efficient case-handling, there was also much concern about how far individual complaints could be used in a manner that addressed underlying systemic problems. The throughput of complaints was not an adequate measure. If there were repeated complaints focusing on the same shortcomings, the role of the ombudsman was to persuade the relevant authorities to address root causes and make changes in law or procedure.

However, the final impact of the ombudsman's work is notoriously difficult to assess. The words effectiveness and efficiency in English are closely related but have crucially different meanings in this context. Effectiveness (or positive impact) is ultimately about how far the ombudsman facilitates the enjoyment of the rights of the public, whether as citizens or simply as human beings. This is difficult to assess, partly because it is hard to find an accurate measurement for the ombudsman's own impact and partly because there are clearly many other factors that bear upon this. Consequently, the temptation is to focus on efficiency, because the ways to measure this are more straightforward. This was the approach taken by the early writings found in IOI occasional papers and issues of the Ombudsman Journal. Efficiency is about how well the ombudsman institution does the things that it does – not whether these are the best things for it to be doing.

In more recent years, both ombudsman institutions and the IOI itself have changed their emphasis. Handling individual complaints remains integral to the role of the ombudsman. But two main changes have taken place. First, many more of these complaints focus on human rights issues that would have fallen outside the purview of ombudsmen of an earlier period. Secondly, many ombudsmen now have mandates that require them to take a systemic approach. Notably, an increasing number of ombudsmen have monitoring functions in relation to torture prevention, disability, or equality and non-discrimination more broadly. New metrics will be required to evaluate both efficiency and effectiveness in these areas.

In recent years the IOI has refined its approaches to evaluation. Perhaps the most developed assessment of the impact of an ombudsman

was a 2015 study conducted by scholars from Ryerson University under IOI auspices, evaluating the city of Toronto Ombudsman.⁴⁷

In 2018, the IOI is engaged in a membership progress evaluation that measures the independence of the ombudsman institution and progress towards compliance with international standards, with a number of ombudsmen volunteering to pilot this.⁴⁸

For all its achievements, the IOI continued with this shoestring existence through most of the 1980s. It did succeed in raising funds from the Canadian International Development Agency (CIDA) to support its programmes, particularly in the training and promotional areas. Gradually the secretariat became consolidated, notably with the arrival of Diane Callan as administrator in 1985.⁴⁹ The leadership of the secretariat shifted, however. At the outset Peter Freeman, a faculty member, was executive director. When he left the university, the post passed to Randall Ivany, first on an acting basis and then substantively after confirmation by the board. Of course, there was still no budget allocation for the executive director's salary, so Ivany's role represented, in effect, a subsidy from the Alberta Ombudsman office. In 1984, Ivany departed from the Alberta Ombudsman office in slightly strange circumstances. He had already served two five-year terms, but tenure was not limited. The Alberta government stated that Ivany had indicated that he did not want to continue in office, but this was untrue.⁵⁰ Ivany was told that the reason the government did not want to reappoint him was that he had too high a public profile and was "empire-building." He felt that the criticism was unfair and was unsurprisingly dismayed. His additional concern was that this was an "attempt by the Chairman and some members of the Selection Committee on the choosing of the new Ombudsman to gain absolute control of the International Ombudsman Institute." He had "little doubt" that they wanted the new ombudsman to be executive director: "This cannot be allowed to happen!"⁵¹ In the event, Ivany was being over-dramatic. By 1987 he was complaining that his successor, Brian Sawyer, had no interest at all in the IOI.

Ivany continued to serve as executive director, now paid, until his death in 1988. From 1985, he suffered increasing ill-health and largely carried out his duties from home.⁵² He was an effective leader of the institute. Alex Weir, secretary then president of the Ombudsman Committee of the IBA – Bernard Frank's old position – was also based in Edmonton and he and Ivany made an efficient team. Frank himself succeeded to the presidency of the IOI in 1984. This group used their contacts in the ombudsman world to expand the reach of the IOI, particularly in Australia, which

had been relatively marginal when the organization was formed, but hosted the 1988 international conference, as well as in the developing world. Ivany had a much narrower conception of the role of the ombudsman than Frank, emphasizing the *classical* ombudsman over any human rights role.

Frank Jones was capable and cautious in his responsibility for the IOI's finances. However, the gap between the director and the treasurer (along with the rest of the secretariat) did not make for good communications and at one point contributed to disaster. The board continued to tinker with by-laws and to wonder whether the institutional set-up was really the best possible. At the 1985 board meeting in Sydney, Ivany offered his resignation, primarily over the continuing financial woes. The outcome – and presumably Ivany's intention – was a vote of confidence in his tenure. Jones moved the vote of confidence, but he was also concerned that the present arrangement was not tenable in the long term and that a more effective executive leadership was required.⁵³

At the 1987 board meeting in Edmonton, there was discussion of whether the IOI should leave the University of Alberta. This was generally phrased in a diplomatic way ("the Institute has been well served by the University of Alberta"), while Jones stressed that the university was very supportive of the institute and was happy to continue hosting if the IOI wished to stay.⁵⁴ In his president's address, Frank mentioned "isolated comments" (with which he disagreed) about moving the institute from Edmonton. He added that "I have been informed that there is an interest on the part of several other countries to house the Institute," before reviving the initial suggestion that the IOI could have multiple centres, including one in Europe.⁵⁵

Looking back on this period from his retirement, Frank Jones sees the first decade of the IOI's existence as a golden age. In his recollection, the people involved in the IOI were of a higher calibre than their successors and the institute was more effectively focused on the needs of ombudsmen.⁵⁶ Yet it was a hand-to-mouth existence. Jones himself was important in ensuring the effectiveness of the IOI, but this continuing financial and institutional fragility meant that when the organization hit serious problems, its very existence was in peril.

Chapter 2: Fighting for survival – 1989–2005

Although he was not an old man, Randall Ivany had been in poor health for some time. In the last few months of his life, he was diagnosed with a particularly aggressive cancer and declined rapidly. It was a time of great sadness, given his importance to the institute and the esteem and affection in which he was held. In September 1988, Randall Ivany died.

Shortly before Ivany's death, Professor Timothy Christian had succeeded Frank Jones as dean of the law faculty and, ex officio, as IOI treasurer. One evening a couple of weeks after Ivany had died, Christian received a phone call from Jones. Ivany's widow, Joan Ivany, had discovered a note among her husband's effects in which he had confessed to embezzling some \$250,000 from the IOI's funds. The money was to feed a gambling habit and the intention had been to repay it. Joan was in a state of disbelief that she never really overcame, thinking the note was some sort of joke or a delusion brought on by her husband's sickness. Jones and Christian both took it very seriously.⁵⁷

Tim Christian recalls what a bombshell the revelation was. Ivany was such a respected and even heroic figure that the deceit was almost inconceivable. As it later emerged, this was precisely how he was able to carry out the fraud. IOI and bank rules required that all cheques bore two signatures. Ivany, Anglican minister and pillar of the local community, had no difficulty persuading the staff in the bank to cash cheques without a countersignature.⁵⁸ The embezzled funds came from a grant negotiated with CIDA, which did not appear on the IOI's books. For this reason, neither Jones nor Christian knew of the existence of the funds, which were in a separate account, let alone that they had gone missing.

Jones and Christian went straight to the police as well as taking legal advice and notifying CIDA. By chance, the fourth international conference in Australia was due to take place only days later. Jones was travelling to Canberra, although Christian was not. Jones convened an emergency meeting of the IOI board, which he chaired – the president, Bernard Frank, was not present. The meeting took barely an hour but put in place

an effective response to the crisis.⁵⁹ Jones briefed the board on what had happened and proposed that the Ombudsman of British Columbia, Stephen Owen, a new board member, be appointed acting president. Owen, Norman Geschke from Victoria, Australia, and Claes Eklundh from Sweden constituted a special executive committee to investigate the fraud and the possible recovery of the lost money, as well as reviewing procedures and safeguards, and the potential impact of the loss on the programme and activities of the institute. Jones himself took over as temporary executive director. One other important decision did not relate directly to the fraud: the board resolved to merge with the International Ombudsman Coordinating Committee – the body that organized the conferences – with the effect that Canberra was the last international conference that was formally separate from the IOI.⁶⁰

Back in Edmonton, Christian and Jones's decisive initial response succeeded in limiting the damage. The police's criminal investigation was concluded when it was established that no one other than Ivany was involved or benefitted. Crucially, the bank had been negligent in failing to require the second signature on the IOI's cheques. An out of court settlement was negotiated, whereby the bulk of the funds were repaid to the institute (and thence to CIDA), in exchange for confidentiality on the IOI's part.

If the financial implications of Ivany's actions were ultimately very limited, the effects in other areas were seismic. The immediate effect was to throw into question the continued existence of the IOI. Stephen Owen recalls being unexpectedly catapulted into the top leadership of an organization at the very moment when it seemed about to disappear from view.⁶¹ The next board meeting was in Vienna in May 1989 and consisted mainly of a prolonged discussion on the future of the institute. It is clear from the minutes of the meeting, as well as the recollections of Owen and Christian, that the very existence of the IOI was up for debate.⁶² However, no one is recorded as proposing the closure of the institute. In part, this was because Christian and Jones had limited the financial damage. Primarily, however, people remembered why the IOI was a good thing that seemed worth saving.

By 1989 there had been a substantial changing of the guard on the board of directors who, under the by-laws as they then stood, were the actual members of the IOI. Jacques Vontobel was the only one present in Vienna from the founding generation. (Frank was still on the board, but not in Vienna and was soon to end his term.) Vontobel spoke, as might have been expected, on the IOI's past achievements. The address by Stephen Owen, the new boy, focused on what the IOI might become in the future. He mentioned several areas. One was training and capacity-building for existing ombudsman institutions, with a focus on Africa. Another was the pro-

motion of new institutions. Owen made particular mention of Latin America, but also referred to the new ombudsman in Poland and the possibility of expanding such institutions in Central and Eastern Europe. In both regions, this view turned out to be prescient. Thirdly, Owen set out his belief that the IOI needed to develop its relations with human rights organizations and, between the Canberra meeting and Vienna, he had sounded out Amnesty International in London. While this vision was only expressed to a dozen men sitting in a Viennese meeting room, it did offer a substantial and innovative way forward. It was completely consistent with Bernard Frank's original vision for the IOI, but went some way beyond the actual practice of the institute in its first decade.

Owen as chairman went around the table and everyone spoke on their view of the IOI's future. No one proposed winding up the institute, with several speakers describing the embezzlement as a one-off event that better procedures could not have prevented. However, the question was also whether a future IOI should remain in Edmonton. Viktor Pickl, director-general of the Austrian Ombudsman Board, made a clear bid to host the secretariat in Vienna. The offer was not well received, although Austria was asked to host the 1992 international conference. Pickl was not an especially popular board member and his bid may have been seen as opportunistic.⁶³ The feeling of the meeting was that the Canadians had handled the crisis effectively and there was a clear majority for the secretariat remaining in Edmonton.

It was not adequate, however, simply to blame the crisis on the failings of one individual. There were systemic aspects of the problem – which Christian acknowledged more frankly than most – and the crisis caused by the embezzlement had brought to light a number of unconnected issues that needed to be addressed. For the new vision to be realized, organizational reforms were required. Most obviously, there needed to be a tightening of financial procedures. Christian addressed this in Vienna and also proposed appointing an international company as auditors, rather than the previous practice of in-house audits in the university. More fundamentally, the special committee appointed in Canberra came back with proposals for wholesale reform of the by-laws – in effect the constitutional framework for the institute.

The original 1978 by-laws, amended several times in minor ways, provided that for the purposes of Canadian law the board of directors were the members of the IOI, while the officers, the executive committee or ExCom, were its directors. The proposal from the special committee, accepted in all its essentials in Vienna, transformed the institute into a proper membership organization.⁶⁴ This was to have two immediate effects. First, it meant that the board was accountable to the international ombudsman

movement rather than being self-perpetuating. Many fine people served on the board in the first decade, but they were not representatives of the ombudsmen, who were no more than subscribers to the IOI's publications. Some board members, such as the Alberta and Ontario ombudsmen, were primarily appointed in recognition of the fact that their provincial governments were donors to the institute. All this would change. The second effect was directly financial. It would be easier to require substantial subscriptions from ombudsmen when they exercised control over the IOI, going beyond simply receiving occasional newsletters and journals.

A further constitutional change arising from the Vienna meeting was a recognition of the importance of creating regional structures. In this, Professor Pickl and his ill-judged bid to host the secretariat played a part. Part of his rationale was that Austria already hosted the European Ombudsman Institute. This led to a discussion of the importance of devolved regional governance – something that was to develop in the coming years as the IOI became more regionally diverse.

The period between the Canberra (1988) and Vienna (1992) conferences represented a dramatic new beginning for the IOI. In retrospect, the possibility that the institute might close down seems a rather melodramatic reaction to an instance of individual corruption. However, the Ivany affair prompted a deep discussion about the structure and purposes of the IOI, with a strong feeling among many key figures that the organization needed to change course. This change was embodied in a changing of the guard as far as the leadership was concerned. There was some important continuity, notably in the person of the universally respected Jacques Vontobel, who had been there from the beginning.⁶⁵ The key figures, however, were a new group of younger leaders.

Stephen Owen had assumed the presidency of the IOI at his first board meeting. The British Columbia Ombudsman had been chosen precisely because he had no prior involvement with the IOI or any of the associated individuals. He turned out to be the right choice. He stayed on the board only for the four-year transitional period, leaving when his term as ombudsman was over. Owen was much less steeped in the traditional ombudsman culture that shaped many of his board predecessors and regarded himself first and foremost as a human rights activist, working among others for the international secretariat of Amnesty International in South Africa and Northern Ireland.⁶⁶ (It would be hard to imagine the Bophuthatswana muddle happening on his watch.) His acute analysis of changing trends in the ombudsman world, as delivered to the Vienna board meeting, set some clear priorities for the IOI. Owen did not deny that the IOI had a promotional role in spreading the ombudsman idea, but he also had a realistic appreciation of what that role might be. The development of new

institutions, especially in Latin America and Eastern Europe, would require support, technical assistance, and advice. This would be the role of the IOI. As it turned out, there would be other new ombudsman institutions emerging through political change, for example in southern Africa. In most instances, these new bodies would see themselves as human rights actors, just as much as Randall Ivany's beloved "classical ombudsman." Owen, young, informal and a human rights advocate, was the right person to lead the institute at this time.

One of the most striking things about Owen's involvement with the IOI was how short it was. Catapulted into the leadership of the organization at his first board meeting, his tenure was no longer than the span from one conference (Canberra) to the next (Vienna). He had finished his term as British Columbia Ombudsman but in his new post as commissioner for resources and environment, or environmental ombudsman, he could have continued his involvement with the IOI, but chose not to.⁶⁷ He left behind a wholly positive legacy.

Tim Christian, the young dean of the law faculty, was just as surprised as Owen to find himself thrown into a leadership role. He had initially viewed his new involvement with the IOI as a pleasant and undemanding addition to the heftier challenges of his role as dean – yet within weeks he was being asked to deal with an existential crisis. Christian and Owen worked as an effective team and their thorough and undemonstrative resolution of the embezzlement issue helped convince board members that the organization should continue. Now Christian found himself with the task of rebuilding the IOI financially. Like Owen – and unlike Frank Jones – Christian too was a human rights lawyer, so he saw the IOI primarily in terms of its contributions in that area. Christian was to become well known in later years for his work on behalf of the Canadian First Nations.

Randall Ivany's successors as Alberta Ombudsman, Brian Sawyer and Aleck Trawick, had shown little interest in the IOI, despite Ivany's fears of a plot to derail the institute. Trawick's successor, however, was to become another part of the team that would rebuild the IOI. Harley Johnson had begun his career in the Canadian army (and retained a distinctly military bearing) before a police career that culminated in him taking responsibility for security at the 1988 Winter Olympics. Johnson essentially took over the role of executive director held by Ivany and then, briefly, by Jones. Both Johnson himself and the law faculty were reluctant to centralize too much power in his office, partly because of the Ivany precedent, but also because he had full-time responsibilities as ombudsman as well. Nevertheless, it did make sense to have the executive authority of the IOI in the same city as its physical headquarters – a link that was lost after Johnson left.

Coincidentally, another young Canadian joined the IOI secretariat in 1989, who was to be a key figure in the institute's development over the next two decades. Linda Reif was a law professor with an interest in human rights and, crucially, some editorial experience.⁶⁸ The Ombudsman Journal had been published since 1981, but management of the academic face of the IOI had been inconsistent, primarily because there was no one in the secretariat with a real commitment to the work. In the earlier years external academics such as Professor Stanley Anderson played an important part, but clearly someone was needed in-house. The law faculty subsidized the IOI by releasing her from some teaching commitments in order to play an editorial role with the institute. Reif brought a consistency and rigour to the IOI's publications that had been previously lacking. She herself became arguably the leading academic authority on ombudsman institutions worldwide, so her judgments on the scholarly quality of what was published became increasingly important, while the IOI benefitted enormously from its association with her.

The other key figure in this period was not from Western Canada and was from an older generation. Norman Geschke, the Ombudsman of Victoria in Australia, had been on the board from the mid-1980s and became secretary in the aftermath of the embezzlement scandal. Geschke had a military background, like several of the first generation of IOI leaders. He had been a career officer in the Royal Australian Air Force and was decorated in the Korean War. He was, however, also a fully paid up member of the awkward squad. He was the first serving officer to refuse promotion in the RAAF, after disputes with Air Board. In a later memorial address to a Jewish veterans' association, Geschke was unsparing in his criticism of governments and top military brass over, among other issues, the exposure of service personnel to radiation in nuclear tests, Australia's involvement in the Vietnam war, the Iraq war, and the treatment of veterans – most of them positions not expected from someone holding senior military rank.⁶⁹ The challenge faced by IOI after the Ivany affair hardly required the same courage and resources as those necessary to survive a mid-air collision – perhaps the low point of his air force career – but they did need a certain steadfastness and integrity. According to Tim Christian, Geschke, who had a background in auditing after his military career, was initially “blistering” in his response to the fraud, but became highly supportive of Christian and Owen when he saw how the matter had been handled.⁷⁰ It was Geschke who was largely responsible for the constitutional reform that democratized the IOI, creating, in essence, the democratic, member-controlled organization that exists today. His contribution was recognized with an award of life membership of the IOI in 1993, along with Stephen Owen.⁷¹

In some respects, the new regime did not look so different to the old one, centred as it was in Western Canada. The big difference was that the ombudsman world was beginning to change very rapidly and the new leadership of the IOI was not only open to these changes but had predicted and encouraged them. The global context was the rapid and largely unexpected fall of Communism. The most immediate consequence was the democratization of Central Europe and the emergence of a large number of new states out of the old Soviet Union and Yugoslavia. In almost every instance, the new constitutional disposition followed Poland in establishing an ombudsman institution. The same historical moment also saw democratization elsewhere in the world. In sub-Saharan Africa, many newly democratizing states such as South Africa, Namibia, Uganda, Ghana and Malawi established ombudsmen. In Latin America, the collapse of the sub-continent's military dictatorships led in many instances to the creation of ombudsmen along the model of the Spanish Defensor del Pueblo, itself part of the constitutional settlement that followed the end of General Franco's dictatorship. What most of these new institutions had in common was an explicit mandate to protect human rights. In other words, and in contrast to the "classical ombudsmen" who dominated the IOI's membership, their role went beyond resolving complaints of maladministration to wholesale protection of both constitutional and internationally guaranteed rights. This had been central to Bernard Frank's vision, as it was to the new generation of IOI leaders.

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One way in which the IOI was able to adjust to this new global reality was through regionalization. There had been a recognition of the need for some kind of regional structure from the outset in 1978, but the three regions – Europe, North America and the "Southern region" – were hardly representative of the institutions most in need of support. The revised constitutional formula under Owen's leadership placed far greater emphasis on Latin America, Asia and Africa, where new institutions were emerging and urgently needed to develop their capacities. The Europe region too had changed in character. In 1978, Europe meant a small number of well-developed and experienced ombudsmen, notably in the Nordic region. In the 1990s, a large number of new institutions emerged in the less developed half of the continent. The 1993 board meeting had an extensive discussion of a report from Arne Fliflet, the Norwegian Ombudsman, about the development of new institutions in Eastern Europe.⁷² By this point there were new ombudsmen in Poland, Hungary, Slovenia, and Croatia, with constitutional provisions for new institutions in several other

countries. Fliflet identified the Council of Europe as a strategically crucial ally, a view echoed by Marten Oosting, vice-president and later president of the IOI.⁷³ It was agreed that the new bodies would need training and support. There was discussion on how to coordinate that assistance between the secretariat in Edmonton and the European region. It was already becoming apparent that the regions would be central to development assistance to ombudsmen.

The decision to hold the 1996 international conference in Argentina reflected the new priority to be given to Latin America (as well as the fact that it was now the IOI's own decision where to hold the conference, so the choice could be articulated with the institute's overall priorities). In fact, the Buenos Aires conference had less impact than expected, although this did not invalidate the choice that was made.⁷⁴

The difference now was not only that more regions were represented, but that they met independently. This was part of a trend that would see an increased devolution of decision-making over the years. Greater power in the hands of the regions created new fund-raising opportunities and hence more regional training and promotional events. The pioneering effort was a 1989 conference in Barbados organized for the Caribbean region. This model was then extended to Latin America, where meetings were held in Puerto Rico, hosted by IOI board member Adolfo de Castro, Panama, Bolivia, Costa Rica, and Argentina. The IOI also supported the development of the Latin American Ombudsman Institute.⁷⁵

Another case in point was the 1990 seminar in Arusha on the ombudsman in Africa, hosted by the Tanzanian Permanent Commission of Enquiry (ombudsman) and funded by CIDA through the IOI.⁷⁶

However, at the board of directors meeting in 1992, Quebec Ombudsman Daniel Jacoby challenged the use of IOI funds for training events. He questioned whether "it is the role of the Institute to provide funds for the regular training operations of Ombudsman staff in a region and what principles are involved."⁷⁷ He argued that it was unfair to the ombudsman offices that could not afford to fund training and might be contrary to the IOI's by-laws. His intervention was in response to a presentation by another new member, John Robertson from New Zealand, soon to take over the presidency, on proposed training activities in the Pacific region. Stephen Owen replied that this was not part of the "regular operations" of ombudsman offices in the region and that, contrary to Jacoby's claim, was aimed at supporting new offices or those that might be struggling financially. Norman Geschke supported Jacoby, saying that "he did not believe the Institute should pay for training of his officers or others in a similar financial position," although he did allow that support for more impoverished countries was acceptable and that this particular workshop "would be of particular value." Robertson

drily quoted by-law 4(c), which stated that one of the purposes of the IOI was “to develop and operate educational programs for Ombudsmen, their staff and other interested people.”

The challenge was a curious one. As Owen put it in his farewell presidential report:

A major issue identified in Canberra was the need for practical training, not just these meetings of Ombudsmen where more philosophical and jurisdictional questions can be debated, but also opportunities of investigators and administrators of Ombudsmen Office [sic] to receive training.⁷⁸

He gave as an example a workshop held in Edmonton in August 1992 specifically for officials working in ombudsman offices rather than ombudsmen themselves.

However, the new emphasis on regions and training threw up issues that Robertson was determined to confront during his tenure. One, inevitably, was funding – not really a new issue, but one that came into sharper focus now that the IOI’s activities were dramatically expanding. The IOI had received strong support from Canadian governmental bodies, including the provinces of Alberta and Ontario, as well as CIDA – a relationship not seriously affected by the Ivany affair. Robertson was concerned that the institute was becoming over-dependent on these sources.

Another issue, not unconnected to the availability of funds, was the question of language. Hitherto, the IOI had been a wholly anglophone body. Its headquarters was in a solidly English-speaking part of Canada, its presidents had been a multilingual Swede, an American, an anglophone Canadian and a New Zealander, and its chief executives and treasurers a succession of anglophone Canadians. But things were changing. The attempted expansion in Latin America made Spanish language skills desirable, while the anglophone bias was clearly holding the IOI back in the francophone world (although the rise to prominence of Daniel Jacoby from Quebec undoubtedly helped in this regard). Robertson reported in 1993 that he was awaiting funds to expand translation of documents – but at the same time he was having to correspond in Spanish, using privately hired translators, in preparation for the next international conference in Buenos Aires.⁷⁹

The Buenos Aires conference marked an important turning point in how the IOI conducted its business. Every conference up until that point had been held either in an English-speaking country (Canada, Australia) or somewhere where English was a common second language and an effective lingua franca (Israel, Sweden, Austria). Now the IOI was meeting in a country where one of the other major world languages was spoken – and Jorge Maiorano, the host, was determined that the conference would not

be held in English alone. The Buenos Aires conference was the first to be formally conducted, with simultaneous translation, in three official languages: Spanish, French and English.⁸⁰ This triggered an important change in the IOI. Thereafter board meetings often had simultaneous interpretation and the secretariat set about the business of translating many key documents into Spanish and French from their original English, as well as smaller matters such as producing stationery in languages other than English.⁸¹ This was clearly essential for an organization that purported to be international in character, so it is a change that would no doubt have taken place sooner or later. But it was driven forward not only by having a conference in Latin America, but also by having a francophone executive secretary. Daniel Jacoby, as a French-born French-Canadian, was particularly sensitive on language issues (as well as being generally efficient), so implementing the new language policy was a labour of love. In 1997, Jacoby polled IOI members to discover their language preferences. Of 102 responses, a majority (67) preferred English but there were significant minorities for Spanish (22) and French (13).⁸² Using the skills in his own office, as well as Maiorano's in Argentina and that of the French Médiateur, Jacques Pelletier, Jacoby transformed the IOI into a body that could be seen as authentically international. This came at considerable financial cost, of course, which meant that there were inevitable trade-offs – one being that it would be more than a decade before a secretary-general was employed.

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One indication of the distance the IOI had travelled came in the selection of the theme for the 1992 international conference: "Ombudsmen and Indigenous People related Matters."⁸³ This was largely driven by another new member of the IOI board, the Ontario Ombudsman Roberta Jamieson. Like her predecessor, Daniel Hill, she was already a distinguished figure in the human rights world before becoming an ombudsman. A Mohawk from the Six Nations of the Grand River, Jamieson was the first indigenous Canadian woman to be awarded a law degree. Even before her appointment in 1989, she was known as an advocate of alternative dispute resolution. Her proposal for the Vienna conference obviously aimed at ensuring that ombudsmen were informed about the rights of indigenous people and prepared to defend them. However, it was ingeniously framed in terms of all that ombudsmen could learn from the dispute resolution within indigenous communities:

She outlined the situation throughout the world of indigenous peoples and the systems that operated in these communities, saying that the very nature of the Ombudsman concept was built into the community systems, that it seemed to

her that Ombudsmen had a lot to learn from these practices and that there was a great benefit in Ombudsmen sharing with Aboriginal and indigenous peoples the philosophies and practices leading towards the common ideal ...⁸⁴

Viktor Pickl (perhaps not alone) seemed somewhat flummoxed by this novel approach and sought “special help” in preparing this item for the conference – which Jamieson and Abdallah Nungu from Tanzania were happy to offer.

The session itself seems to have been well received. In a subsequent reflection on the discussion, Jamieson remarked that “As we share our expertise through IOI with developing countries we must remain sensitive to the fact that countries have their own institutions and will shape developments ...” The IOI would need to be flexible, accommodating different cultures and processes. “Whether we serve indigenous populations or not [we] need to reflect the people we serve and remain responsive.”⁸⁵

The discussion on indigenous peoples appears to have triggered a broader reflection on how ombudsmen should become more accessible. Jamieson’s research suggested that ombudsman clients tended to be “well-educated men of European extraction.”⁸⁶ There needed to be strategies to reach other groups who might be less well-informed about the services the ombudsman had to offer, including women and people with disabilities, as well as ethnic minorities such as indigenous peoples.

In Jamieson’s own work in Ontario, this appreciation led to the development of an approach known as “service equity.” If the most vulnerable sections of the population were least represented among complainants, then the onus was on the ombudsman to bring the services to the vulnerable. The Ontario Ombudsman did this in a direct and physical manner. Jamieson and her director of outreach, Fiona Crean, opened nine local offices in the province and established a mobile clinic to visit other areas.⁸⁷ Equally important was an emphasis on systemic investigations, rather than just individual complaints-handling.⁸⁸ This approach extended into international work. Although not strictly under the auspices of the IOI, Jamieson and Crean did important work in supporting new ombudsman institutions throughout the 1990s, in countries including Namibia, South Africa, Bolivia, Peru, Argentina, and Taiwan. Fiona Crean recalls that initially the Bolivian ombudsman received no complaints from the indigenous population – exactly the same issue that they had confronted in Ontario.⁸⁹ This offered an important model for the assistance that the IOI could offer young institutions – expert, non-prescriptive, and tailored to the particular problems confronted. Unfortunately, it was some years before this became the general model.

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Who is an Ombudsman?

From the inception of the IOI no issue has been more frequently debated than this simple, foundational question: who is an ombudsman? It is hardly surprising that there should have been early discussion of who was entitled to membership.⁹⁰ What has been remarkable is that the same discussion has been revisited so many times. It might be thought that the question was finally laid to rest in Wellington in 2012, with the final establishment of a clear constitution. History would suggest that the question may not have been finally resolved.

The early debates were discussed in some detail in Chapter 1. The issue that most preoccupied the IOI in those years was the distinction between legislative ombudsmen – that is, those appointed by and accountable to the legislature – and executive bodies that might fulfil similar functions, but which did not enjoy the same autonomy from those government agencies under investigation. On this question, those like Bernard Frank, who saw the ombudsman as a human rights institution, were at one with the majority of the board, led by executive director Randall Ivany, whose emphasis was on the centrality of the classical ombudsman. Nevertheless, there was some bending of the rules. At that stage, there would have been no African members at all in the early years if the IOI had stuck to the principle that members could only be legislative ombudsmen.

An early issue was the status of the jurisdiction that the ombudsman represented. There was considerable internal controversy, discussed in Chapter 1, over the membership in the IOI of the ombudsman of Bophuthatswana, one of the unrecognized South African “homelands.” Membership of the Control Yuan from Taiwan was accepted without controversy, but then became an issue when the People’s Republic of China sought IOI membership.

Another question that arose was whether local or specialized ombudsmen were eligible. Although there was certainly a view within the IOI that they should not be included, in fact they always were. Among the early cohort were Jacques Vontobel, the city ombudsman of Zürich, Bea Serota, the British local government ombudsman, and Inger Hansen, the Canadian Correctional Investigator. Of course, many prominent figures in the IOI’s history have come from sub-national jurisdictions within federal systems, including IOI presidents Stephen Owen, Clare Lewis, and Bill Angrick.

Soon, however, the main issue over eligibility shifted. The increasing number of private sector ombudsmen, especially in North America, created a challenge to the ombudsman “brand” and an impetus towards including them within the IOI. This impetus has consistently been resisted. There has not always been consensus on the criteria for membership, but there has generally been agreement that private sector “ombudsmen” do not belong. The reasoning has varied. Many IOI board members have stuck with the legislative criterion. A striking example would be Sir John Robertson, the IOI president in the early 1990s, who as New Zealand ombudsman promoted legislation restricting use of the ombudsman title. Others, with more of an inclination towards the human rights mission of the IOI, have stressed the aims of the ombudsman – the protection of the weak – rather than its formal attributes. This was the view of Roberta Jamieson, who emphasized the social justice aspect of the ombudsman’s role over the complaints-handling.

While these approaches clearly differ, what they share is a pragmatic rejection of excessive strictness in interpreting eligibility for membership. There is a striking distinction from other international bodies in the same field. The Ombudsman Association, for example, essentially admits any body that has an ombudsman’s complaint-handling function, whether public or private. On the other hand, the Global Alliance of National Human Rights Institutions (GANHRI – formerly the International Coordinating Committee) stresses adherence to various formal criteria in line with the Paris Principles on NHRIs. It acts as an accreditation body and hence must have rules that are applied with the maximum consistency. This means, however, that a less effective national body will always be preferred over sectoral or sub-national institutions, which are explicitly excluded according to either the Paris Principles or GANHRI’s own rules. The IOI has always consciously avoided this approach. The 2012 by-laws codify the criteria to an extent that had not been done previously, but did not change the approach.

The post-1988 revision of the by-laws was a radical constitutional reform, democratizing the IOI and making its members sovereign. Ironically, it was the essentially self-appointed board that made these changes. It did this in the most consultative manner possible, circulating the membership (or subscribers) with details of the proposed revisions. Finally, in Vienna at the international conference the process was completed and the members approved the changes.⁹¹ What this did not achieve, however, was the reso-

lution of the debate that dated back to 1976: who was an ombudsman? The new president, John Robertson, said at the 1993 board meeting in Wellington that “I think we were too pure” and “promoted a class distinction” between single-purpose and general ombudsmen. The single-purpose ombudsman had been excluded from membership in exclusive favour of the classical ombudsman. In some respects, the discussion that followed had changed in tone from the debates of the late 1970s. Marten Oosting, later to be president, offered as a basic criterion that all offices were “created to strengthen democracy.” He argued that this was the “basic element that unites them” and that it also served to exclude private sector ombudsmen (which had been the bugbear of the IOI in North America especially). Roberta Jamieson argued along similar lines. The IOI was “not an international organisation of dispute resolvers,” she said. “This organisation is about people who stand in between government and members of the public If we denude the [ombudsman] concept then we will lose the character and integrity that it should have.”⁹² Like other contributors to the discussion, she strongly favoured drawing the line to exclude private ombudsmen.

John Robertson felt sufficiently strongly about the matter that he introduced amendments to the New Zealand Ombudsman legislation prohibiting unauthorized use of the term by private sector ombudsmen. The term was not prohibited, but authorization had to be sought – and could be refused. As Robertson wrote: “I think there is some magic in the name ‘ombudsman’ which needs to be nurtured and protected in the public interest.”⁹³

* * *

While the period from 1988 to 1992 was one of reform and consolidation, what followed must sometimes have felt like a permanent revolution. The first decade of the IOI was one of relative calm because, in truth, there were few activities outside the quadrennial conferences. Stephen Owen’s presidency fundamentally recast the relationship between the board and officers, on the one hand, and the membership on the other. In achieving this, Owen, Geschke, Christian, and their colleagues were very clear that such change was necessary both to rescue the IOI and to allow it to face the challenges of the new global context in which the numbers of ombudsmen were multiplying. After Owen, under the leadership of John Robertson and the Dutch Ombudsman Marten Oosting (from 1994), the issue became one of capacity. Oosting wrote a paper for the board meeting in October 1995 that went into some depth on the issues that he saw confronting the IOI.⁹⁴ First, he set out the international context, with the

growth in the number of ombudsman institutions, the expectation that this growth would continue, and the fact that even many of the existing institutions were not yet IOI members. These institutions, especially the newer ones, faced their own financial constraints, which often made IOI membership difficult. At the same time, the demands on the institute were increasing, while its resources were limited. Funding was still inadequate and staff numbers were limited (one full-time office manager and a part-time editor). The IOI was, in essence, a voluntary organization, with all board members and officers (except the treasurer) having their own ombudsman office to run. In this context, Oosting went on to look at the various structural elements of the IOI.

He started with the regions, echoing Robertson's view that these were "the backbone of the IOI," but pointing out that the by-laws did not mention the regions except as constituencies for electing directors. Implicitly, what Oosting was advocating was a more radical decentralization that would give the regions greater autonomy in their operations. His remarks on the election of board members also largely pertained to the regions as the constituencies and organizers of elections.

Discussing the role of president, Oosting raised several concerns. In essence, the problem was that the president remained a full-time ombudsman while in office and received no remuneration. This limited the time that a president could devote to representing the IOI, as well as limiting the number of ombudsman institutions that might be prepared to take on the role.

Oosting also questioned the relationship between the offices of secretary and executive director. The former, at this time the Australian Eugene Biganovsky, was more limited in its functioning than it could have been, since it was the executive director who was responsible for supervising the secretariat (although he too was a full-time ombudsman). Oosting's proposal was for the creation of the office of secretary-general, which would combine the functions of the secretary and executive director in a single office and person.

Meeting in The Hague, the board discussed Oosting's paper. Executive director Harley Johnson pointed out that, as a full-time ombudsman, he could not offer more than the 40 hours a month he currently worked for the IOI. If the board wished to go ahead with the proposal to create the office of secretary general, he would be prepared either to resign his ombudsman position in order to take it, or to withdraw and focus solely on his ombudsman work. However, the issue was not pushed to a resolution; instead a review committee was established under Daniel Jacoby's chairmanship, to consider the issue and report back.⁹⁵

Oosting raised another important question about the future role of the IOI – one that would prove to be very perceptive. Much attention had been paid, not least by the president himself, to the role of the IOI in promoting and assisting new institutions. Oosting asked what the role of the IOI should be if “the integrity of a specific Ombudsman institute ... is threatened.” In the mid-1990s, when human rights were seen by many as being irreversibly in the ascendant, this was not a question that many were asking, but ultimately it went to the heart of the IOI’s future role. He was also perceptive on the unique character of the IOI:

We have to bear in mind that IOI is not a governmental organisation, so far that we do not represent states, but on the other hand also is not really a non-governmental organisation either, given the fact that it unites holders of a public office. It is evident that IOI should follow the policy to abstain from playing any political role, and especially should not interfere in internal affairs of a country. On the other hand, sometimes solidarity with and support for a specific colleague might be desirable from a point of view of cooperation between professionals, and from safeguarding the integrity of the concept of Ombudsman in a specific situation.⁹⁶

Jacoby’s review committee reported back to the board in Buenos Aires in October 1996. Along with a short report, the committee made no fewer than 25 proposals to be voted on.⁹⁷ If that sounds horribly cumbersome, most of the proposals were non-controversial and simply tidied up the by-laws to reflect accurately the general consensus among both board and members. Most important were those proposals that crystallised the position of the regions. The six existing regions were maintained, rejecting an earlier suggestion that more regions might be added. While more decentralization might have been appealing to some, its net effect would probably have been to weaken the regions. This set of proposals strengthened the power of the regions, notably through the creation of regional vice-presidents (which in turn raised the question of whether there was any continuing need for an overall vice-president). The regional vice presidents would:

... carry out the prerogatives of the president ... as delegated by the president. In particular the vice-president would promote the objectives of the I.O.I., as set out in the by-laws. The regional vice-president will coordinate regional activities including the securing of funds [sic] and other resources.

This substantially decentralized the IOI and made the regions the key level of governance. Previously, under the post-1988 by-law reforms, the regions became the constituencies for board members. Now they actually acquired executive powers. These reforms were not at all controversial in the board discussion of the review committee’s report.⁹⁸ The only real

point of contention in the discussion of the regions was the status of the Caribbean. Jorge Madrazo from Mexico, one of the review committee members, felt strongly and understandably that the Caribbean ombudsman tradition was quite different from that of Latin America. Equally, it did not sit comfortably with North America (or, perhaps more accurately, the United States, with no strong tradition of legislative ombudsmen, did not fit with Canada and the Caribbean). The obvious solution – that the Caribbean be its own separate region – was rejected in order to avoid there being too many regions.

The most contentious topic – no surprise here – was the question of who was entitled to membership. The review committee had made a proposal that was eventually accepted in essence by the board, which broadened eligibility. It proposed that specialized ombudsmen who otherwise met the criteria for membership would be eligible. This would cover cases such as Sweden, where there was a classical ombudsman and then additional specialized ombudsmen, also deriving their authority from the legislature. This did *not* include private sector ombudsmen. If a specialized ombudsman itself fell under the jurisdiction of a voting member of the IOI – that is a classical ombudsman – or if it had jurisdiction over both public and private bodies, then approval by the board of directors would be required to become a voting member.

This proposal opened the door much wider than it had been previously, but it was then slightly closed again. The British ombudsman, Sir William Reid, made an intervention that was widely welcomed and formed the basis of an amended proposal that was finally accepted. He did not accept the admission of specialized ombudsmen unless there were “very strong reasons” and reiterated that no body should be admitted that itself fell within the jurisdiction of an ombudsman. He also addressed the question of the admission of human rights organizations – a separate proposal that became conflated with this one. His position was that human rights organizations were admissible *where they acted as ombudsmen*. This latter compromise was important for winning the support of some of the new institutions, such as the Latin Americans, for whom the human rights mandate was intrinsic. The IOI’s secretary, Eugene Biganovsky from South Australia, was particularly set against extending voting membership to specialized ombudsmen, fearing that the regional agenda would be dominated by the concerns of these bodies, which were remote from those of parliamentary ombudsmen.

Justice Abdul Shakurul Salam from Pakistan then created a new controversy by stating that the IOI’s voting members should consist exclusively of national ombudsmen. This was immediately slapped down by Madrazo – an ombudsman from a federal state – echoed by Oosting, who pointed

out that the IOI had long included state and local ombudsmen (sparing the Canadian, Australian and US representatives the need to make this point).

Roberta Jamieson took a different approach, which although it did not precisely correspond to what was voted upon, perhaps reflects best the flexible attitude that the IOI has continued to maintain. Unlike several other speakers, she favoured admitting specialized ombudsmen provided they had an investigative mandate and pursued complaints against public governmental agencies. Her main point, however, was that the IOI could not be prescriptive. It could not play a leadership role unless it was prepared to be open to different organizational models and different ways of operating. The approach echoed the discussion about indigenous peoples four years earlier – the IOI must be prepared to learn from the diverse approaches out in the world.

Sir Brian Elwood from New Zealand, later supported by Arne Fliflet, took a more pragmatic approach. His fear, like Biganovsky's, was that the regions would be overwhelmed by specialist ombudsmen. Fliflet said that the 2000 conference would have not 500 delegates, but 5000. The conclusion of the debate was a fudge. Specialized ombudsmen could be admitted, but only with board approval.

The one other divisive issue among the Jacoby committee's proposals was the idea that a new post of secretary general should be created. This would be a purely executive position – so, not a voting member of the board – but also salaried, unlike the present secretary. This development was prompted by the fact that Harley Johnson was leaving the board and so there would no longer be an executive director. The committee's proposal was clear. It resolved a shortcoming that had been there for the entire 18 years since the IOI's formation; it corresponded to the way that other international organizations functioned; and it was the solution that would eventually be adopted – 13 years later. Tim Christian was the first to pour cold water on the idea. The institute barely had an operating surplus; members were having difficulty paying subscriptions; and there were proposals on the table (subsequently passed) to make the IOI properly trilingual, at a cost that was currently unknown. He said the board was "talking about more money than we have."

Leading the support for the proposal was Roberta Jamieson. A secretary general was essential for carrying out the functions of an international organization. More than 20 years later she argues that the creation of a secretary-general would have "shown that we were serious. We were not a club."⁹⁹ The IOI should provide what it could and the new official should be responsible for raising money to augment his or her salary. Johnson, the outgoing executive director supported her. Christian's response,

as someone involved in the day-to-day management of the secretariat, was to say that the executive director could not be done away with:

I would not like to see us give away what we do not have. If [we] gamble and do not find money, we will be in serious trouble This is not pessimistic, but realistic.

The compromise that was crafted more or less retained the status quo. Several board members rejected the term “secretary general.” “Executive director” was retired along with Harley Johnson. What was agreed was “executive secretary.” It very soon emerged that Daniel Jacoby was to be that official – a board member with executive powers, and hence substantially different from his own proposal.¹⁰⁰ Interestingly, the post of executive secretary did not outlive Jacoby’s board tenure, any more than “executive director” had outlived Johnson’s. In this sense, the IOI continued to operate as a rather young (and poor) organization, in which constitutional arrangements were tailored to individuals and the available funds, rather than being an established and permanent framework.

Daniel Jacoby, who now found himself a central figure in the IOI apparatus, was at the same time fighting an important battle against the Quebec government. Jacoby was born in wartime France and emigrated to Canada as a child. A lawyer, he was appointed Quebec Ombudsman in 1987. In his first decade in office, he issued a series of recommendations that were highly critical of the authorities, none more so than in the case of the “Duplessis orphans.” Maurice Duplessis was prime minister of Quebec between the 1930s and 1950s and the so-called “orphans” were in fact children born out of wedlock and placed in custodial institutions by the strongly pro-Roman Catholic government. In these institutions, there were frequent and well-documented instances of physical and mental abuse. Jacoby as ombudsman recommended compensation for the survivors and, as a consequence, was refused a third five-year mandate in 1997 (just after he had taken on these additional responsibilities with the IOI). Initially, it appeared that the Quebec government would have to pay Jacoby a financial settlement equivalent to four years’ salary, leading to his suggestion that he could use this as a salary to work full time for the IOI. In light of the discussion in Buenos Aires, this seemed like a considerable windfall. In the event, however, he continued in office until 2001 because the Liberal opposition in parliament would not agree on a successor with the nationalist government.¹⁰¹

Jacoby’s problems with the Quebec government may account for an initiative that he took towards the end of his term as IOI secretary. He proposed the creation of a “Committee for Continued Watchfulness,” composed of regional vice-presidents, to monitor threats or attacks on the independence or integrity of ombudsmen:

The Board [in Durban, 2000] confirmed that the IOI should become very involved in protecting the independence of ombudsmen and ensuring that IOI member offices have sufficient resources to properly carry out their mandates; the IOI would intervene as needed in the most appropriate manner.¹⁰²

For many in the human rights community, the 1990s were something of a honeymoon period, with much rhetorical commitment on the part of governments and a plethora of new human rights mechanisms at national, regional, and international level. What Jacoby correctly foresaw was that some governments would become much less favourably disposed towards human rights institutions such as ombudsmen and would use a variety of means, some overt and others less so, to interfere with their effectiveness. In later years, this was to become an important priority for the IOI.

Others in the IOI, however, were concerned at the control that Jacoby was accruing for his office in Quebec. Lewis Klar, the affable tort lawyer who succeeded Tim Christian as dean and treasurer in Edmonton, worried that Jacoby's budget was too high. Sir Brian Elwood, the New Zealand Ombudsman who became president after Maiorano's brief tenure, took a positive view of the work that the secretariat in Edmonton was doing and agreed with Klar to cut Jacoby's budget.¹⁰³ Elwood recalls that the board became "concerned about Jacoby's objectives" and that Jacoby promoted his own role.¹⁰⁴ André Sasseville, who was responsible for international affairs in Jacoby's office, by contrast, recalls a man with one of the sharpest intellects in the ombudsman world, who played a crucial role in shaping the IOI.¹⁰⁵

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The publications side of the IOI had been professionalized by the arrival of Linda Reif in 1989. The next big step forward came in 1997, when Reif concluded negotiations with Kluwer Law International, a leading academic publisher, to handle the IOI's scholarly output. Most important was the Ombudsman Journal, which was transformed into the International Ombudsman Yearbook, a hardcover volume that would be distributed through Kluwer's global networks. This was both an acknowledgment of the quality of the material being published and an opportunity to reach a much wider audience. It did, however, pose some practical problems. First, this was only a contract for an English language publication. So, while the IOI was reorienting itself towards a multilingual future, the publications programme remained overwhelmingly in the monolingual past. Secondly, the involvement of an external publisher, with the deadlines that imposed, increased the pressure on Reif to ensure that there was sufficient copy. The new publication was bigger than the old journal (200 pages to 160). It was

often hard to predict what was going to come in. Conference years were easier, because presentations could often be transformed into articles with little difficulty, but years in between could be challenging. This was where the journal suffered from not belonging fully in either the academic or activist world. Academic journals never suffer from a shortage of submissions – the problem is usually the reverse. An editorial advisory board was established in 1996 to facilitate the peer review process and worked smoothly.¹⁰⁶

Despite the occasional difficulties in generating copy for the Yearbook, there was no doubt that quality material was being produced. Reif also negotiated a contract with Kluwer to publish between hard covers an anthology of material that the IOI had produced in the previous eight or nine years, mainly from the journal. This was a way of showcasing the best of the institute's publications for a wider audience.¹⁰⁷

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A recurring theme throughout the 1990s was the potential relationship between the IOI and the United Nations. In part, this was to do with the IOI's turn towards human rights from the Owen presidency onwards. It was also because, from the Vienna world conference on human rights in 1993, the UN began for the first time to put together a substantial institutional machinery for human rights protection and promotion. UN engagement with human rights goes back, of course, to its charter and to the Universal Declaration of Human Rights in 1948. This led to the formation of the Commission on Human Rights as an intergovernmental body. The development of the human rights treaties and a series of specialized "charter" mechanisms resulted in a number of expert bodies, but these were composed of external individuals. In principle, human rights treaty bodies and specialist mandate holders were supported by the UN Centre for Human Rights, but before the Vienna conference this was poorly funded and sparsely staffed. In the post-Cold War, post-Vienna world, human rights became a shared preoccupation of governments of different political shades and the staff and institutional machinery began to be put in place. Most important of all was the designation of an Ecuadorian diplomat, José Ayala Lasso, as the first UN High Commissioner for Human Rights.

The IOI board had had occasional discussions on the need to develop UN relations back in the 1980s and Owen had written to the Economic and Social Council in 1991 about the IOI acquiring consultative status.¹⁰⁸ In 1992, Robertson commissioned the British Ombudsman Sir William Reid to investigate consultative status further.¹⁰⁹ However, it was only with the priority that the UN gave to human rights in the mid-1990s that

the issue took on real importance for the IOI. Lewis Klar recalls that Marten Oosting was particularly concerned with establishing some sort of formal UN relationship.¹¹⁰ At the 1995 board meeting, a committee was set up, chaired by Roberta Jamieson, to pursue further links with the UN.¹¹¹ In earlier discussions, the IOI's strategy had never got past consideration of what formal status the institute should have. For non-governmental organizations, the normal approach would be to apply for consultative status with the Economic and Social Council (ECOSOC). The problem, for at least some IOI members, was that they considered themselves governmental, not non-governmental. Jamieson's committee, by contrast, started by considering the substance rather than the form of the relationship. Equally, the starting point was what the IOI had to offer the UN, in the form of the expertise of individual ombudsmen, rather than the benefits to the institute of some formal status.¹¹² At one stage, the question was even raised of whether the IOI should become a specialized UN agency, an obvious non-starter that was quickly squashed.¹¹³

The Mexican Ombudsman, Jorge Madrazo, was a key figure in this relationship. At this stage in the IOI's evolution, before a large influx of Central and East European ombudsmen, it was the Latin American institutions that had the strongest human rights mandate. And, importantly, Ayala Lasso was himself from Latin America. Unfortunately for this line of approach, the Ecuadorian government intervened. Ayala Lasso was recalled from Geneva to become his country's foreign minister. There was a hiatus before his successor took office, but she was a far more dynamic character who breathed real life into what became known as the Office of the High Commissioner for Human Rights. She was the outgoing Irish President, Mary Robinson. This prompted the involvement of the Irish Ombudsman (and IOI board member), Kevin Murphy, to establish a relationship.¹¹⁴

Yet the IOI-UN dialogue yielded few practical outcomes in this period. However, Robinson's tenure as High Commissioner did see an extraordinary emphasis on the promotion and support of national human rights institutions. Back in 1946, the ECOSOC had proposed the creation of national committees to monitor states' adherence to the human rights standards that were declared foundational to the UN. The Commission, a government body, was not enthusiastic and repeatedly vetoed the proposal when it periodically resurfaced. Over time, however, national mechanisms of various sorts emerged to monitor government human rights performance, be they human rights commissions, equality bodies, or ombudsmen. The UN began to take an interest in these developments in the 1970s – roughly concurrent with the formation of the IOI – and sponsored a series of gatherings of such bodies. This culminated in the famous 1991

Paris meeting that produced a set of principles governing the formation and operations of national human rights institutions. A number of ombudsmen, mostly from Europe, attended the meeting, with some, notably Jacob Söderman from Finland, contributing to the discussion.¹¹⁵ However, none of them was involved in drafting the Paris Principles,¹¹⁶ which rapidly became a very important normative statement, endorsed by both the Commission on Human Rights and the General Assembly. These are consequently not formulated in such a way as to be directly applicable to ombudsmen. (In places, institutions are explicitly referred to as commissions, there is an underlying assumption that such institutions have multiple members, and ombudsmen are identified as an example of the sort of body with whom NHRIs should collaborate.)¹¹⁷ It is unfortunate that the principles were drafted just too early to take account of the new wave of human rights ombudsmen in Latin America and Europe (although they already had the example of such institutions in Spain, Portugal and Poland).

Mary Robinson assigned a senior advisor, the former Australian human rights commissioner Brian Burdekin, to develop NHRIs as a central part of the UN human rights mission. However, despite warm exchanges to start with, neither Robinson nor Burdekin displayed much interest in the IOI. On the UN side, there seemed to be a feeling that the IOI was trying to compete with the newly created International Coordinating Committee of NHRIs. Maiorano was a member of this committee, while Mireille Roccatti, Madrazo's successor as both Mexican Ombudsman and IOI director, was vice-chair. Yet despite this overlap, and a proposal that the ICC become an observer to the IOI board, nothing became of the relationship.¹¹⁸ Roberta Jamieson recalls that not only did her committee fail to "get past Brian Burdekin;" there was also little interest on the IOI side.¹¹⁹

Some alternative approaches were suggested. The regions, particularly Latin America and Europe, seemed to develop stronger relations with Mary Robinson's office, as well as other UN agencies, notably the United Nations Development Programme. It can hardly have been coincidental that these were the two regions with a large number of human rights ombudsmen – which is to say, national human rights institutions that were also IOI members.

During his brief presidency of the IOI, Jorge Maiorano was particularly interested in pursuing a different relationship – with UNESCO, the cultural agency of the UN. UNESCO's director, Federico Mayor, proposed that the two organizations sign a memorandum of understanding. This was based upon a promise of UNESCO funding of \$25,000 for the IOI. There were some reservations expressed on the IOI board, but the proposal was agreed by a majority and signed in June 1999.¹²⁰ However, shortly after

the agreement both Maiorano and Mayor completed their terms of office and no funds were transferred to the IOI. When Jacoby travelled to Paris to meet UNESCO officials in September 2000, he was informed that the promised funds would not be paid and that the IOI would require a formal list of proposed priorities before it could consider further funding. In fact, the promised \$25,000 had been based upon a clear list of priorities.¹²¹ The only positive outcome was attendance by officials from IOI member institutions in the Caribbean and Latin America at a UNESCO conference in Mexico in 2001.¹²²

One of the expectations from UNESCO funding had been the further development of an idea already in its inception: a training manual for ombudsman staff, with a particular focus on handling investigations. Initiated by the board, this proposal passed through the regional vice-presidents to obtain feedback within the regions. Most of the work of developing the manual was done in the Ontario office of Ombudsman Clare Lewis. The development of an initial draft was piloted at a workshop in Namibia. As Elwood explained in 2002, the manual was “not a textbook. Rather it is a framework for a training programme which is flexible enough to be modified or expanded depending on the level of experience of those being trained.”¹²³

* * *

The involvement of the People’s Republic of China in the IOI became a priority for several leaders of the institute in the 1990s, none more so than Sir Brian Elwood, the New Zealand Ombudsman who was president from 1998 to 2002.¹²⁴ Engagement with the Chinese Ministry of Supervision was complicated by the fact that the Control Yuan of Taiwan had been admitted to IOI membership in the early 1990s. Subsequently there was some criticism levelled that the board had not paid sufficient attention to the implications of admitting a Taiwanese institution.¹²⁵

Elwood engaged in persistent low-level diplomacy to find a way of admitting the Chinese Ministry of Supervision – at least, he was trying to conduct negotiations below the radar, but this was made difficult by both sets of interlocutors. When he visited Taiwan, during an audience with the President he found himself photographed in front of a bank of Taiwanese flags – something he had been specifically warned against. When he then went to Beijing, the flag incident went unmentioned, but his hosts were surprised to find that Elwood arrived alone with a single suitcase and missing the accompanying retinue, baggage train and wife that would seem to befit his status.¹²⁶ In fact, this modest, informal style proved to be one of the stumbling blocks. The Chinese were mistrustful of the ombudsman’s

lack of binding powers, by contrast with the extensive legal tools available to their own Ministry. Of course, the Ministry of Supervision's character as an executive organ ruled it out of IOI full membership but, as Elwood points out, a not dissimilar arrangement in Japan had found favour with the IOI and compromise might have been possible.

The 1998 board in Islamabad held a lengthy discussion on China, with sharp differences expressed.¹²⁷ The Hong Kong Ombudsman, Andrew So, backed by Abdul Shakurul Salam from Pakistan, proposed extending an invitation to the Ministry of Supervision to apply to the IOI for membership. Since the institute could hardly then reject the application, this was in essence a decision that there were no eligibility obstacles and that the Control Yuan would be expelled. Elwood, who had been most engaged in these negotiations, counselled caution. Daniel Jacoby had also studied the issue closely and was concerned that China was far from meeting membership criteria. He also warned that the Control Yuan could sue the IOI in the Canadian courts. The final decision – “to study the matter further” – reads like classic bureaucratic obstruction, but was in reality the only tenable decision. In 2018, the search for an accommodation continues.

The question of how to navigate an international organization through issues of recognition and non-recognition of states had first affected the IOI in the 1980s over Bophuthatswana. The blithe refusal to acknowledge external realities was not very effective on that occasion and the China issue provided a sterner test of the IOI's diplomatic skills. A similar issue arose in the late 1990s when Pakistan, through IOI director Abdul Shakurul Salam, made a strong bid to host the 2000 world conference. Although there were some misgivings, the board was prepared to back this until it emerged that the Israeli state comptroller would be unable to attend, along with any other ombudsmen who had an Israeli stamp in their passport. The board deemed this exclusion of a member institution unacceptable and the conference was moved at short notice to Durban, South Africa. This was the first time the conference had been held in Africa and was also seen as an acknowledgment of the important role in the IOI of the South African Public Protector, Selby Baqwa, in promoting the IOI across the continent.¹²⁸

What is the IOI for?

A surprising amount of the internal debate within the IOI has revolved around the fundamental question of the purpose of the institute. In some respects, this has changed dramatically over the years, which partly goes to explain why the IOI of 2018 looks so different from the IOI of 1978.

The founding proposal of the IOI placed considerable emphasis on the institute as an academic body. This is why it was located for so many years within a university. It was assumed that ombudsmen could benefit from this in two ways. First, the institute would compile a collection of resources for ombudsmen to use, including laws, reports, and studies of ombudsmen's work. Secondly, scholarly research could provide insights into what worked and what did not work in the practice of ombudsman institutions. While the first of these was unanimously seen as beneficial, there was a degree of scepticism about the second. Some ombudsmen clearly feared that they might be subsidizing the generation of fanciful academic theories that would have little bearing on their own work. They need not have worried. Little academic research was conducted under the IOI's aegis in its first decade. A collection of materials was started, although the IOI's first president, Ulf Lundvik, was critical of its anglophone bias and many consequent gaps. It was only with the arrival of Professor Linda Reif in 1989 that the initial academic aims of the institute finally took a concrete form. The *Ombudsman Journal*, which had been published since 1981, was professionalized and later, through a contract with a Dutch legal publisher, became the *International Ombudsman Yearbook*. There were also scholarly collections, as well as Reif's own substantial research output. By the mid-2000s, however, many of the initial misgivings about the benefit of an academic connection had resurfaced. The task force reviewing the IOI's work questioned whether the University of Alberta really constituted a centre of academic excellence in ombudsman studies.¹²⁹ In the restructuring that took place, it was felt that the academic focus could be dropped.

The other main dimension of the IOI's work in the early years was what we would now call "networking." The inception of the IOI followed the first international ombudsman conference. The conferences were an attempt to bring ombudsmen together to create personal links and learn from each other's experience. The institute was initially an effort to solidify these links between conferences. However, the first four conferences remained organizationally distinct from the IOI. The Vienna conference of 1992 was the first to be formally held under IOI auspices. This set-up meant that the institute constituted a very effective network for the dozen or so ombudsmen who sat on the board at any one time, but was rather remote from the institutions who paid a subscription fee. There was a certain amount of disquiet about what members received in return for their subscription. The issue was not easily resolved, however,

because the capacity of the board and secretariat to give greater value for money was contingent on having more money to spend and, since member subscriptions were the main source of income, this was difficult to deliver without raising fees. So, the intermittent grants received from mainly Canadian sources in the 1980s were very important to the IOI's capacity to deliver programmes, but were never enough to transform the nature of the institute.

From the 1990s, many leaders of the IOI understood the need to develop the institute to the point where it offered serious benefits in exchange for the membership fee. The most creative attempts used partnerships with other bodies to deliver services beyond what the IOI could offer alone. For Marten Oosting and Roberta Jamieson in the 1990s, partnering with United Nations bodies seemed very important. Yet, for a variety of reasons, little positive benefit came out of this. Partnership with the Ontario ombudsman to deliver training courses on complaint-handling had a greater impact – although for the most part this was not realized until some years later.

So, when the task force was established in the mid-2000s, with a very broad remit to review the IOI's role and structure, the same question was basically unresolved: what did members get in return for their subscription? President Bill Angrick, who chaired the task force, did not want to phrase it quite as baldly as that and stressed that IOI membership was also about the contribution that institutions could make to advancing ombudsmanship. Yet, for another task force member, Bruce Barbour, the need to offer something decent in return for the subscription was an existential issue for the IOI. There were not too many alternatives; if the IOI did not offer value for money then it would fade out of existence. Likewise, secretary Alice Tai underlined the importance of the IOI providing training and expertise for the many newly emerging ombudsmen.

In the post-task force, post-2009 IOI, there are a number of benefits of membership – some the same as ever, going back to 1978, but others that represent a distinctly new type of organization:

A network of like-minded institutions: The initial purpose of the IOI was important and remains perhaps the foremost reason why ombudsmen join. “Networking” has become much more effective, however, since the regions became the primary affiliation for member institutions. Ombudsmen can meet and communicate with their peers from nearby countries on a regular basis.

Information: In Frank Jones's initial proposal, the IOI's role as repository of information on the ombudsman world was central and, in

many ways, very advanced in the way that it envisaged the likely role of information technology. The information function has been seen as central throughout the IOI's history and was significantly enhanced with the hiring of an editor, Professor Linda Reif, in Edmonton in 1989. The improvement of recent years has been a website with much more substantive content and regular new updates.

Defence of ombudsman institutions: This has become a central focus of the IOI, as instanced in the 2016 Bangkok Declaration and the secretary-general's activities in defence of ombudsmen under attack. In early years, this was not even seen as an issue and, even once it was put on the table in the 1990s, it was not treated as a priority.

Support for capacity-building: Developing the skills, knowledge and resources of ombudsmen was always seen as an important function of the IOI, although in the early years this was largely addressed through exchange of information. By the 1990s, training was seen as a central priority, yet it is only in recent years that this has been carried out in a systematic manner. This is partly because of the greater resources available, but has also been facilitated through partnerships with other specialized bodies, for example in the anti-corruption and anti-torture fields.

The 1990s were a period of dramatic growth for the IOI, as they were for the ombudsman movement worldwide. The former did not necessarily follow from the latter; it happened because, confronted with potential disaster, the institute's leadership initiated dramatic reforms. Underpinning these were the constitutional changes that transformed the IOI from essentially a self-selected club into a genuine membership organization. From there the IOI devolved considerable authority to the regions, recognizing that these were generally the most relevant structure for assisting national ombudsmen. It became a genuinely international organization through a policy of multilingualism. Administration was professionalized, even if the exact relationship of board, secretariat and secretary remained contested. On the programme side, however, much remained to be done. The publications programme was very solidly based and some initiatives such as the investigation training manual offered precisely the sort of service that members were looking for. But there was still a strong sense that this was not enough. The reasons for this were mainly financial, as they had been from the beginning. Treasurer Lewis Klar, for example, not himself an ombudsman or a human rights lawyer, could see this clearly.¹³⁰

In the early years of the new century, as the environment for human rights work was again becoming more difficult, a couple of presidential

addresses mused on this. Sir Brian Elwood concluded his presidency in 2002 with these observations:

Whilst the focus of recent years was to see an Ombudsman institution established in more countries, I think it can be said that that objective has been significantly achieved with the Ombudsman now being part of the public sector landscape in more than 111 countries. Whereas the past approach has been to extend the membership base, the time has arrived to consider whether growth in the number of members alone is the right direction for the Institute given the purpose of its founding. The larger the membership base, the more complex will become the constitutional and administrative arrangements necessary to accommodate members with differing jurisdictional functions. ...

The immediate focus of the Institute's activities needs to be on assisting our members particularly in the professional development of their staff resources.¹³¹

This all made sense. While the early mission of the IOI had been primarily to evangelize around the idea of “ombudsmanship,” now more than ever it had a duty to support its members. Unfortunately, while membership expanded it also contracted in some areas. In Latin America particularly, member institutions failed to pay their subscriptions, disregarded warnings, and were ultimately expelled. This could be attributed to indiscipline on the part of members. There were also endless soul-searching discussions over the years about the conditions under which discounted membership could be offered. But ultimately the problem may have been that the IOI simply was not offering enough of value to its members.

This issue was touched upon two years later by Elwood's successor, the Ontario Ombudsman Clare Lewis, in his farewell address. Lewis asked whether the IOI ought not to give financial support to regional activities. (“Such a proposal could be funded modestly at best, given Institute financial realities.”¹³²) But he pointed out that the cost of translation, now deeply embedded in IOI culture, had a considerable impact on the availability of funds for other purposes. The simultaneous translation of the 2000 Durban conference, for example, cost \$95,000 – which only a few years earlier would have been equivalent to the entire annual budget of the IOI.

Lewis raised important questions about the close interrelationship of human rights and “traditional” ombudsman functions, being himself from a classical ombudsman background and exposed to a different human rights world through his engagement with the IOI. He sought feedback from the members – not just vague expressions of satisfaction or dissatisfaction but concrete suggestions on what the IOI should be doing. As he handed over to Bill Angrick, there was a sense of inchoate unease about the future of the IOI.

Images



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1. Bernard Frank pictured in the 1970s.
2. Joan and Randall Ivany with Alberta Premier Peter Lougheed at the first international ombudsman conference, Edmonton 1976.
3. Randall Ivany, 1976.
4. Sir Moti Tikaram from Fiji and Sir Guy Powles from New Zealand – key figures in the IOI's early history.



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5. The IOI's first board meeting. Board members were (back row, l-r) Ulf Lundvik, Randall Ivany, Frank Jones, Bernard Frank, Joseph Bérubé, (front row, l-r) Marina Vontobel (wife and interpreter of Jacques), Bea Serota, Oliver Dixon, Moti Tikaram, Jacques Vontobel.
6. Israeli Prime Minister Menachem Begin opens the second international conference in Jerusalem in 1980. Ivany is on his right and Itzhak Nebenzahl, the Israeli state comptroller, on his left (in yarmulke).



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7. Participants at the 1980 Jerusalem conference.

8. At the Ottawa board meeting in 1983, (l-r) Ulf Lundvik (Sweden), Robert Fabre (France), Evan Rees (Trinidad), Bernard Frank and Randall Ivany.



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- 9. A 1980s board meeting. Note the missing women.
- 10. Linda Reif, publications officer from 1989, and president Stephen Owen of British Columbia.
- 11. Tim Christian took over as treasurer at a perilous moment.



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12. Linda Reif speaking at a training event in Edmonton.
13. Alberta Ombudsman Harley Johnson was executive director in the early 1990s.
14. Ontario Ombudsman Roberta Jamieson was one of the most active board members in the 1990s (credit: Indspire).
15. Dutch Ombudsman Marten Oosting was president from 1994 to 1998.
16. Daniel Jacoby of Québec developed the post of executive secretary and foreshadowed many later reforms of the IOI.



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17. Sir Brian Elwood, one of three IOI presidents from New Zealand (credit: New Zealand Ombudsman).
18. The task force meets in Vienna, 2006.
19. The Barcelona board confirmed that the secretariat would move from Edmonton. Pictured (l-r) Tom Frawley (Northern Ireland), Peter Kostelka (Austria), Rafael Ribó (Catalonia), Riita Leena Paunio (Finland), Mats Melin (Sweden).



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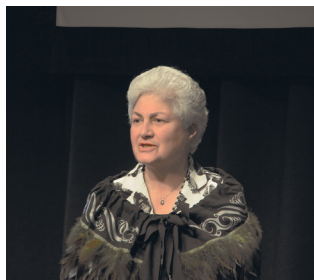


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20. The expanded task force meets in Edmonton in 2007 (l-r) Alice Tai (Hong Kong), Bill Angrick (Iowa), Peter Kostelka, David Percy, André Marin (Ontario), Song Chul-ho (Korea), Gord Button (Alberta), Bruce Barbour (New South Wales).
21. Task force in Edmonton. The IOI's long-time administrator Diane Callan is seated. Behind her (l-r) Alice Tai, Bruce Barbour, Bill Angrick, Peter Kostelka, Song Chul-ho.
22. Alice Tai and Beverley Wakem, at the Vienna board meeting, 2009 – two of the dynamic women who have led the IOI in recent years.



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23. The IOI's first secretary-general, Peter Kostelka.
24. Beverly Wakem opens the international conference in Wellington, 2012.
25. IOI president Wakem signs a memorandum of understanding with Alima Traore, the president of the African Ombudsman and Mediators Association. MOUs have been an important tool for the post-2009 IOI.
26. The African directors of the IOI in Vienna, 2013: Caroline Sokoni (Zambia), John Walters (Namibia, IOI president 2014–16), and Alima Traore (Burkina Faso).



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27. Peter Tyndall (Ireland) and Diane Welborn (Dayton, US) after having been elected president and first vice-president respectively at the Executive Committee, Bangkok 2016.
28. Secretary-general Günther Kräuter and the Vienna secretariat (l-r) Ursula Bachler, Ulrike Grieshofer, and Karin Wagenbauer.
29. Defending the independence of ombudsmen – mission to Poland, 2016: (l-r) Rafael Ribó (regional president), Peter Tyndall (president), Günther Kräuter, and Ulle Madise (Estonia).
30. Recent years have seen a sharp increase in training events in all three official languages. Pictured here is a „Sharpen Your Teeth“ event for investigators, Vienna 2011.

Chapter 3: Reform and renewal – 2006–2018

As the board members assembled on the Caribbean island of Antigua in November 2005, they confronted a set of interlinked questions that their predecessors had been debating right back to the very inception of the IOI – and with increased urgency since the reconstitution of the institute after the Ivany affair. What was the benefit of being an IOI member? How could the IOI fund its activities? And how could the institute have an executive body that was linked to the board on a day-to-day basis? Elwood and Lewis had both identified these issues and pointed ways forward, but the questions were becoming increasingly urgent as the IOI was actually losing members. The perennial debate about who constituted an ombudsman continued too, with the expansion of private sector ombudsmen, particularly in North America. While there was no doubt that the IOI remained the premier representative body for ombudsmen worldwide, how far was the status quo sustainable?

Overseeing the Antigua meeting was the IOI's president of one year, Bill Angrick. However, if William P. Angrick II was new to the presidency, he was no newcomer to the IOI. He had been Ombudsman of Iowa – one of the few state ombudsmen in the United States – since 1978 and had served on the IOI board in the 1980s. Paying tribute to Angrick on his retirement in 2010, Iowa Senator Chuck Grassley recalled how the establishment of the Iowa Ombudsman had not been universally welcomed, with such agents of accountability sometimes being as welcome as “skunks at a picnic.”¹³³ A former political science academic, Angrick had a sharp mind and a forthright manner that enabled him to do some effective skunking, not only with miscreants in the Iowa state bureaucracy, but also in the IOI itself. In the 1980s, he had criticized Randall Ivany's position on South Africa. In his early months as president, he challenged the newly formed International Ombudsman Association for encroaching on “the established identity and good name of the IOI.”¹³⁴ Now, in Antigua, there was a distinct danger of the IOI going backwards.

Fortunately, Angrick had allies. It was Peter Kostelka, the regional vice-president for Europe, who led the push for action. Kostelka, one of the three Austrian Ombudsmen, was a former social democratic member of parliament who had become a stalwart of the IOI in Europe, pushing the institute to the fore as a partner of the UN and individual ombudsman institutions. He had a very clear vision of where the IOI should be heading. Time after time in the discussions about the institute's future, Kostelka would refer to the models of other international organizations, with strong secretariats and delivery of services to their members. He made no secret of his low opinion of the work done in Edmonton.

The final agenda item in Antigua was on the future of the IOI. Kostelka spoke:

When IOI was first established some 20 odd years ago, ombudsman offices were mushrooming around the world. IOI underwent a process of self-definition through academic research and publications. Since then, IOI had matured organizationally and now required support beyond the academia. IOI should be looking at the practicality of running an ombudsman office and share best practices so as to learn from one another.

The Europe Region was undertaking such an exercise, with a view to identifying members' needs regarding the means and tools of ombudsmanship, and such practical issues as might flow therefrom. As regards IOI, there was a general perception of inadequate membership benefits beyond the Year Book and the world conferences. IOI must make itself relevant to members by offering projects or deliverables to help their work.¹³⁵

At the conclusion of the discussion, the board established a task force to identify and develop proposals for future action. Angrick was to chair this group, with Kostelka a member along with Alice Tai, the IOI secretary and Hong Kong Ombudsman and Bruce Barbour from New South Wales, regional vice-president for Australasia and the Pacific.¹³⁶

So far, there was nothing to guarantee that the eventual outcome would be anything different from that of the Jacoby committee a decade earlier, which had been established with a very similar mandate but led to few lasting or radical changes. There were differences, however. For one thing, the central leadership, Angrick and Tai, were firmly behind the exercise to an extent that Maiorano had not been in the earlier review. For another, the regional vice-presidents, represented by Kostelka and Barbour, had a far greater weight now (themselves a product of the Jacoby reforms). And the new task force was not starting from scratch. A few months earlier, the executive committee – Angrick, vice-president Lethebe Maino from Botswana, Tai, and David Percy, the new treasurer from Edmonton – had met in Mexico with the regional vice-presidents. The discussion was far-reaching and set an agenda for the task force.¹³⁷

First, the Mexico meeting considered the role of the IOI, identifying the change that had taken place since the 1980s: “In reality, IOI is an umbrella organization that operates through its regions The six IOI regions vary greatly as a result of the difference in their cultures, economic development and perspectives on issues.” For example, human rights are a major issue for Latin America and Eastern Europe, but not for the Commonwealth countries, which “have no direct or overt brief for human rights, even though human rights underlie every decision that an ombudsman makes.” One consequence of this was that “instead of a ‘one-fits-all’ top-down approach, regions would be better served by being allowed to develop initiatives that meet their needs.”

At the same time, the IOI did still need to enhance its international exposure “to retain its position as the premier international ombudsman organization.” One way of doing so would be to enhance awareness among international organizations, so that they would draw on the IOI’s expertise – that is, its members – to assist the development of new ombudsman offices. This was, of course, precisely the course advocated by Roberta Jamieson’s UN committee in the 1990s. The Mexico meeting recognized that their ideas were not necessarily new. The problem was that “[p]revious boards held similar discussions with no concrete outcome because nobody was identified to take ownership of the task(s).” Actually, as shown in the previous chapter, this was not true as first Jamieson and Oosting, and later Maiorano had taken ownership of the UN issue. The reasons for failure were a little different.

The meeting also discussed an interesting question about whether the IOI should allow itself to be enlisted in making political representations to governments on human rights violations. Participants were worried that this could be a problem in countries with classical ombudsmen, who should be seen as apolitical. (From the record, no one seems to have pointed out that documentation and criticism of human rights violations should not be seen as politically partisan.) However, it was felt that IOI members could document human rights abuses and supply this information to international human rights bodies. Also, the IOI would act in defence of ombudsman offices, as both Jacoby and Oosting had urged a few years previously.

There was a lengthy discussion about the issue of membership fees. This was important in two related senses. First, there was the question of whether members received value for money for the fees they paid. Secondly, many members had defaulted on fees that may have been set too high. While national Western European and North American members would generally have no difficulty paying the \$750 annual fee, this could be rather a steep sum for offices from Eastern Europe or the global South.

There was also a suggestion that provincial or local ombudsmen on smaller budgets would find the fees too high. (Bill Angrick recalls trying unsuccessfully to persuade colleagues in the US Ombudsman Association to join the IOI – only to be rebuffed because of the lack of value for money.¹³⁸) In the discussion in Mexico City, a distinction was made between “national and established offices,” which would support the IOI “regardless of whether they derive concrete benefits from their membership,” and other offices, which might have to make a financial choice between the IOI and “some other regional or specialty ombudsman associations.”

There was consideration of whether some independent measures should be identified to measure affordability, such as per capita income or the size of the office budget. The level of fee could then be pegged to such a measure. Another alternative was to set the fee at an “affordable” level and cut activities, if necessary. A third option was to divert a portion of the membership fee to the regions to fund their activities. Diane Callan pointed out that the policy of differentiated fees had been tried in the past, with richer offices paying \$1000. It was scrapped because it was seen as unfair.

Then the Mexico City group debated another hardy perennial: who is an ombudsman? In fact, there seems to have been little appetite to relax membership criteria to admit “specialty ombudsmen.” There was, however, a division over how far the IOI should develop closer links with other ombudsman organizations that do admit the specialty ombudsman. The Europe region in particular strongly held that the IOI should remain an organization of legislative ombudsmen and should keep its distance from “regional ombudsman-like organizations.” The meeting agreed no changes to membership criteria, but left it up to the regions to decide whether “to cooperate appropriately with specialty ombudsman organizations within their region.”

Perhaps the greatest departure from previous thinking at the Mexico City meeting was over the status and autonomy of the regions. Participants placed a far greater emphasis on the diversity of regional needs and hence the need for more initiatives at the regional level. The discussion was prompted by an issue arising out of the use of the training manual. The Latin America and Caribbean region had proposed the hiring of two lecturers to take the manual to countries in the region, with costs shared between the IOI centrally and the region. It was envisaged that recipient countries would fund local costs. At the 2004 board meeting in Quebec, this idea was rejected on the grounds that anything offered for one region should be offered for all. This rejection was not endorsed in Mexico: “The meeting did not share this ‘one-fit all’ [sic] mentality.”

It would be far better for regional initiatives to be attempted and incremental successes achieved, then [sic] to make no attempts at all. In principle, successful regional initiatives can be repeated and adapted for use by other regions.

The Latin America and Caribbean proposal was revived and supported. Peter Kostelka's suggestion that the Europe region should become a separate legal entity (while still part of the IOI) was a step too far for the moment.

This, then, was the baseline from which the task force began work.¹³⁹

* * *

The four task force members were all from different regions and in vastly different time zones: Angrick in Des Moines, Iowa; Tai in Hong Kong; Barbour in Sydney; and Kostelka in Vienna. This created practical problems, but by now email was a regular tool of communication (which also leaves the historian with a very thorough record of the debate, even in its less formal moments). What the four had in common were professionalism, great attention to detail, and a commitment to reform the IOI. They were very different personalities, however. Angrick, who guided the process, was firm, but genial. Kostelka's sometimes prickly exterior concealed a dry sense of humour. After a long political career, including a spell as government minister and leader of the Social Democrats in the Austrian parliament, he was appointed a member of the Ombudsman Board in 2002. Kostelka had driven the Europe region forward and shown a strong commitment to the IOI. He was disliked in Edmonton, however, where he was seen as having an agenda to seize control of the secretariat. Alice Tai was also straight-talking and shared Kostelka's generally low opinion of the work done in Edmonton.¹⁴⁰ She had been an excellent secretary, streamlining the membership process. Bruce Barbour, the ombudsman from New South Wales in Australia, was regional vice-president for the Australasia and Pacific region. He had been a lively critic of the status quo from his first involvement in the IOI. He recalls being "aghast" at his first board meeting in Quebec, when his fellow regional vice-presidents proceeded to read verbatim the reports they had submitted (and which had been circulated in advance of the meeting). He announced that he did not intend to do so and proposed that they use the meeting more productively. Recalling that period, he describes the IOI as a "moribund boys' club."¹⁴¹ Interestingly, John Walters, the Namibian Ombudsman who became IOI president in 2014, uses almost identical language to describe his first impressions of the IOI at the Quebec world conference: "an old boys' club."¹⁴²

So the task of reforming the IOI fell to four strong characters, none of whom was shy about putting forward their views, which were not necessarily in agreement with each other. They were, however, united on the urgent need for change and worked very effectively together, if not without occasional clashes. Both the contemporaneous record – an immense number of emails – and the later recollections of the four members evidence a largely harmonious and cooperative process, as well as the vast amount of work that went into the task force.

The other major character in this process was not a task force member, but the custodian of the secretariat. David Percy had succeeded Lewis Klar as dean of the law faculty and *ex officio* IOI treasurer. A British-born lawyer specializing in the energy sector, he was a charming and loyal man who fought for the interests of the Edmonton staff. Despite the sometimes acrimonious debates surrounding the task force, he maintained good relations with most of the task force members. The latter generally thought he had little interest in the work of the IOI and lacked the commitment of his predecessors.

What might have surprised the task force members was how far Percy shared their concerns. He described board meetings as “three days of unbelievable tedium,”¹⁴³ but Barbour’s initial view was not so different. This did not, however, mean that he was uncommitted to the institute. But his view was that the IOI was mainly just a cost to the law faculty, with no one other than Linda Reif getting any benefit from its presence. While Percy understood Kostelka’s view that the IOI should be doing more for its members, he felt it was not realistic to expect Diane Callan and Edmonton to be doing that. According to Percy’s account, he had argued internally that the university should stop hosting the IOI even before the task force was established. It followed that when there was a call for tenders to host the secretariat, Percy decided that the law faculty should not bid.

The task force set about its work by identifying five priority issues and assigning responsibility to members of the group to write a discussion paper. But on each topic more than one paper was commissioned. On one topic, namely the secretariat, there were initially as many papers as there were task force members.¹⁴⁴

Regions

One of the most striking differences between the IOI today and 40 years ago is the expansion of the membership, not only in absolute numbers but in geographical spread. The initial members were a small number of European institutions (notably the Nordic ones),

many from Canada, Australia and New Zealand, and a few outliers including the United States, Israel, Fiji and a couple of African countries. The initial regional structure reflected this division, with no place for a distinct African region, for example. The three regions that existed when the IOI was formed were: North America, Europe, and the Southern Region (that is, everywhere else, whether north, south, east or west). These regions had no real function or constitutional status.

A regional structure has evolved both because of the need to decentralize, but also to reflect the common needs and interests of members in different regions, with Africa, Asia and Latin America all acquiring considerable importance – along with the massive growth of ombudsman institutions in Europe – and the original core of anglophone members becoming correspondingly less weighty within the overall setup. The constitutional overhaul of the 2000s led to increased devolution of power within the IOI towards the regions.

The present constitutional arrangement arose out of the task force recommendations in 2007. President Bill Angrick saw regionalization as “one of the more fundamental, perhaps even radical, of our ideas.”¹⁴⁵ It is probably not coincidental that three of the four task force members had prior experience of being active in their regions before joining the board. Angrick was the exception, but he had long been active in the US Ombudsman Association (USOA) and so shared the experience of what could be done at the regional level.

The regions as an organizing structure had emerged from the constitutional reforms that followed the near collapse of the IOI in 1988–89. By the time of the task force there were six of them, with the old Southern Region now constituting four new regions: Africa, Asia, Australasia and Pacific (APOR), and Latin America and the Caribbean. The regions were the most vibrant and active part of the IOI. The challenge was that the regions had evolved in very different directions, with APOR and Europe in particular having developed strong structures, some independent funding, and separate activities. Despite being an IOI heartland, the North American regional structure was much weaker because of the much greater strength of the USOA, which only contained five IOI members. Europe, APOR and North America were the richer regions that had no problems funding their own activities. The need was to harmonize the approach so that the IOI itself supported the weaker regions.

Aside from a constitutional reform that “federalized” the IOI and raised the status of regional representatives to “regional presidents,”

a system of regional subsidies equalizes the resources available to the poorer regions. The development of training initiatives and improved communications and information technology also allow all regions to participate in the IOI as more equal partners.

The first issue was regionalization, described by Angrick as “one of the more fundamental, perhaps even radical, of our ideas.” The reason it was radical was that the task force was pursuing the idea proposed, but not embraced, by Kostelka in Antigua: that the regions might become separate legal entities empowered to pursue their own funds. The regions had long been seen as an important component of the IOI, certainly since the Owen presidency, but the question now was whether it might be a strategy that would help the institute out of its current problems. Kostelka and Angrick were not the only enthusiasts. Barbour had stated: “the strength of the IOI largely resides in the continued strength of its regions. Any activities or proposals that are undertaken by the Board need to be with a clear direction of supporting and enhancing cooperation in the regions.”

A series of questions flowed from this:

Perhaps at some time in the future we should outline the kind of legal entities or authorities needed, whether those be accomplished under the present bylaws, whether the legal entities vary by region and if so will any of that impact upon the legal foundation of the IOI itself? Will there be funding mechanism [sic] for legal support or will that be each region’s responsibility [?] Do each of the IOI regions have the legal status to seek out grants and other support from organizations or governments? Or would a portion of each member’s IOI dues be earmarked for the region?

If the review of the regions was “radical,” the second topic was clearly the most potentially controversial: the secretariat. The disconnect between the decision-making body, the board, and the executive had bedevilled the IOI since the early years. How could this be addressed? Barbour recommended:

The IOI should review its current Secretariat model. Before deciding to retain this model, consideration should be given to whether alternative models might better meet the requirements of the IOI as it looks to its future and reform agenda.

Angrick noted that “this is potentially the most controversial of undertakings, especially if we propose relocating the IOI administrative office.” He was concerned that the “cat is already out of the bag” on relocation. The administrator, Diane Callan, had apparently alluded to the issue, presumably after being briefed by David Percy. So, everyone knew that this

issue was on the table. “I think the future of the IOI depends upon a strong, well resourced, active, professional secretariat,” Angrick wrote in an email to the other task force members:

Are there other models that might be feasible: a formal legal headquarters somewhere with specialized regional offices? or would an idea like that dilute the IOI’s already scarce resources? should the IOI be partnered with an established ombudsman office (as it was in the beginning with the Alberta ombudsman) or is an academic home preferable? Or would a coordinated and equally participating ombudsman plus university partnership give us a synergism we now lack?

What is clear from this is that, while it was fairly apparent that the status quo could not continue, the precise outcome of the review was very far from being determined. The options Angrick presented tie into another of the themes of the task force: the academic contribution. The idea of the IOI as a centre for scholarly study of ombudsmen was central to the original vision and was reinforced by locating the administration within a university. It was probably true to say that no one among the current generation shared this as a priority. Barbour, for example, while not hostile, did not see the academic contribution as being particularly useful for ombudsmen.¹⁴⁶ Kostelka was probably strongest in rejecting any scholarly role for the IOI. Paradoxically, he had been responsible for initiating perhaps the most substantial academic project sponsored by the IOI – a comparative study of the legislation behind all European ombudsman institutions.¹⁴⁷

A fourth focus for the task force was the services provided to members. This question – what do institutions receive in exchange for their membership fee? – had long dogged the board. What made it particularly urgent and serious was that in a growing number of regions there were other professional bodies that were doing a better job of providing the services that the IOI should have been offering. Not only did they offer more, but it was much better tailored to the particular needs of the region.

The fifth and final area for discussion was conferences. Angrick himself was not an enthusiast for the quadrennial conferences: “I am much more practical and believe many of our colleagues are also.” He regarded these as jamborees that achieved little for the practical benefit of ombudsmen. The question was whether conferences should be smaller and more frequent and whether they should be annual or retained as quadrennial.

The task force explored a number of options on each of these issues. One of the obstacles, which the task force members themselves were only partly aware of, was their lack of understanding of aspects of the IOI history. Two examples will suffice.

First, in August 2006 Alice Tai had a long conversation with Sir Brian Elwood to try to clarify certain facts about the IOI’s history, in particular

how the arrangements for the secretariat in Edmonton had come about. According to her note of the conversation, Elwood explained the faculty's initial involvement reasonably accurately. Then, quite incorrectly, the note dates the beginning of the relationship between the IOI and the university to "the wake of the Ivany Affair," when it "seemed like a god-sent offer."¹⁴⁸ In reality, the involvement dated from 10 years earlier than that and was probably a precondition for the IOI even existing in the form that it did. The Ivany affair actually threw the continued hosting of the IOI into doubt. There was clearly no malicious purpose behind this rather garbled version of history, since Elwood had always defended Edmonton's corner, but it does illustrate how the task force was sometimes proceeding on imperfect information.

The second example was more damaging in that it increased tension between the task force and the secretariat. It was commonly understood among other task force members that Kostelka wanted the secretariat to move to Vienna.¹⁴⁹ There was nothing improper about this and it was certainly not a foregone conclusion. As we have seen, it was not clear that the future secretariat would be hosted by any ombudsman office, let alone the Austrian. Kostelka's "agenda" had not escaped the secretariat in Edmonton either.¹⁵⁰ In a phone call with Angrick, Percy mentioned that "what is happening now is the same move as was attempted years ago by the 'Austrians' to relocate IOI to Europe." This was attributed by Angrick to "Tim Christensen [sic]." "What's he talking about?" Angrick asked the other task force members, suggesting that Barbour or Tai call Sir Brian Elwood.¹⁵¹

Alice Tai did call Elwood, who was not enlightening: "Sir Brian was quite categorical that he was not aware of any Austrian attempts in that direction."¹⁵² Michael Mauerer from the Austrian Ombudsman Board got a little further. He identified Tim Christian as former dean and IOI board member. He also noted that Viktor Pickl, former director-general of the Austrian Ombudsman Board, had been vice-president of the IOI. Mauerer had been with the Ombudsman Board since 1991: "Since that time not one discussion or resolution of the elected ombudsmen ever dealt with the idea of 'removing the IOI to Austria.'" Mauerer suggested: "Maybe Mr. Christian mixes up Austria with Australia," and concluded: "I put such statements in the dump and try to get not too weary with such attempts not to improve the IOI."¹⁵³ Tai was similarly irritated: "may I respectfully suggest that we should put David [Percy] to the proof Otherwise, not only will this be unfair to Austria ..., this will undermine the Task Force's credibility."¹⁵⁴

This reaction is illustrative of the rather fractious relations between Edmonton and the task force. The reality, of course, was that both sides were

correct. There had indeed been no suggestion of a move to Vienna since Mauerer joined the Ombudsman Board in 1991 (which was roughly the same time frame that Elwood was discussing). Pickl's attempt to move the secretariat came in 1989. What is slightly depressing is that relations were at such a low ebb that no one picked up the phone to Tim Christian in Edmonton – an IOI board member for a decade – who could have cleared the issue up in a moment. Equally, that the university believed, incorrectly, that there was an Austrian agenda underlying the task force's work is illustrative of the lack of trust that had developed.

The mutual suspicion over the supposed Austrian "agenda" was closely paralleled by Percy's irritation over what he saw as unwarranted attacks on Edmonton's management and performance. Indeed, the remarks about the long-term Austrian plan came in a conversation with Angrick, prompted by a first draft of the task force's paper on the secretariat.¹⁵⁵ As noted, Percy was critical of the overall performance of the IOI in delivering services to its members and sympathetic to the aims of the task force. However, that sympathy evaporated when he received the draft. First, he was annoyed that it arrived during the summer break when both he and Linda Reif were on vacation – the latter out of town – with a short deadline for comments.¹⁵⁶ More substantively, he objected to the fact that the draft came with a number of factual queries, yet still managed to reach a number of conclusions. How was it possible to make recommendations when the underlying facts had not been substantiated?

It is hardly professional to make recommendations before all the facts are known and we could have supplied the requested information at any time over the last year.

The reason that I am severely perturbed by the unfairness of this procedure is that it is apparent that many of the comments in the Task Force Report are based on some members' assumptions and prejudices on the magnitude of tasks performed here, unguided by any reference to the facts of the operation. I will have no alternative but to protest at the manner in which the task force report was prepared. If the membership decides in 2009 that it does not want the University of Alberta to remain as the administrative office that is their right. However, it is unconscionable that any such process should begin with recommendations that were made on the basis of such an alarming distortion of the facts.¹⁵⁷

Percy's concern was that "recommendations once made tend to become policy," even though this was only a first draft. Indeed, the paper set out three options for the secretariat. The first, maintaining the status quo, was "not a satisfactory option." One alternative was to increase the number and level of paid staff. This was desirable, but unlikely to be supported by the membership, who would prefer to see their fees directed towards member services and would be unlikely to support an increase in fees. That left

a third option, favoured by the task force: “Enlist willing Board members and their offices to share some of the tasks, preferably on a voluntary and honorary basis.” However, this option in turn begged a number of questions. Which office would assume the lead coordinating role? What would happen when members retired from the board or functions changed? Should roles and responsibilities be rotated? The answer that the task force gave was that the secretary and the administration should be “co-located.”¹⁵⁸

A particular solution was “suggested for consideration.” As Percy had correctly noted, this recommendation already had its own momentum. The IOI’s secretary and the administrator – collectively the “secretariat” – were to be re-connected and accommodated under one roof. The secretary would be a serving ombudsman, as at present, and the secretariat would be attached to their office. For the sake of continuity, the secretary’s appointment would have to be “on a fairly long-term basis” and with a formal indication of support from the government of the host country. Operating costs of the secretariat would be borne by the host office, although it was open to the IOI to make a contribution to costs.

Percy already thought that the law faculty should not continue to host the IOI.¹⁵⁹ What he objected to, however, were criticisms of Diane Callan and Linda Reif that he saw as factually incorrect and unwarranted. For example, the paper stated that the secretariat had not been providing “executive functions” of bookkeeping and correspondence or “management functions” of implementing board resolutions. Percy responded: “I am not aware of a single instance in which the listed executive functions have not been carried out.”¹⁶⁰

The paper also stated that “the IOI has not emerged as the leading forum for academic contribution to the world of ombudsmanship,” a conclusion Percy rebutted as “blatantly false.” He referred to the contract with Kluwer/Martinus Nijhoff, with a corresponding improvement in the IOI’s profile in the academic world, as well as the improved quality of the papers published in the yearbook. He pointed out that Professor Reif’s 2004 book *The Ombudsman, Good Governance and Human Rights* was the only serious academic monograph on the ombudsman in recent years “which has been very well received and reflects great credit on the IOI.”¹⁶¹

The task force mainly worked remotely between board meetings. But in March 2007 it was due to meet in Edmonton. In advance of that meeting, Percy wrote to the entire board. He said he felt he should give them “early notice of a decision that may well provide a focus for the discussions in Edmonton the University of Alberta Faculty of Law is no longer prepared to act as the administrative office of the IOI.”¹⁶² This would take effect after the international conference in Stockholm in 2009 – this had

been postponed a year from the usual quadrennial slot of 2008 in order to mark the bicentennial of the first Swedish Ombudsman.

Percy said that the relationship of the faculty with the IOI had deteriorated since 2004 in three major respects. First, he wrote that the faculty hosted four other internationally recognized centres and institutes that brought the faculty approximately \$8 million each year. By comparison, the IOI occupied about three weeks of the dean's time each year, which was double the time taken by the other four centres combined. Yet the faculty subsidized the IOI rather than having it generate income.

Secondly, Diane Callan was fully occupied running the day-to-day operations of the IOI. In recent years "she and I have been deluged with requests for information that have to be attended to in addition to her ordinary responsibilities Many of the requests deal with what can only be described as administrative details ..., yet they are often treated as if they demand immediate action."

Thirdly, in recent years "I feel strongly that some members of the Board have addressed requests to, and made public comments about, Diane, Linda and me with a brusqueness, bordering on rudeness, that is unprecedented in the history of the organisation We offer exactly the same level of service that has sustained the IOI for a long time, but we feel as if we are now treated as a scapegoat for the failings of the Board"

The board and task force were taken aback at this announcement. But there is no doubt that it immediately paved the way for the merger of the secretary and the administration that the task force proposed. Percy's stated reasons for withdrawing were all genuine, but there was another consideration too: he knew that Edmonton could not hope to compete with Vienna and Barcelona, the apparent front-runners to host the secretariat.¹⁶³

The mood in Edmonton was far from despondent. Relations with the board had deteriorated and Percy's announcement created a new clarity that made life easier for all concerned. Linda Reif comments in retrospect that it was about the right time for the relationship between Alberta and the IOI to end.¹⁶⁴ She herself had progressed from being a junior academic, engaged by the IOI for her editing skills, to becoming the world's leading scholar of ombudsmen. In return, she had given the IOI a solid academic credibility that had previously been lacking and a professional publication programme.

For Diane Callan, the move was more difficult. She had been hired by the faculty to assist Randall Ivany in 1985, on the recommendation of her friend Diane Conlon, who had handled the administrative work in the IOI's earliest years. She was returning to the workforce after having children and, initially, this was a part-time, purely secretarial post. Later

Callan's job description expanded, along with her hours of work, becoming full-time administrator. It was rather lonely work, on the second floor of the law faculty library with no immediate colleagues, since both the dean of the day and Linda Reif had many other responsibilities. Gradually Callan's role was recognized, with Tim Christian and Marten Oosting both encouraging her to take a more active part in board meetings and successive deans had a high regard for her work. Reflecting today, she says that she had hoped to work for the IOI until retirement (although in fact she was rehired in a different capacity by the faculty). But she harboured no resentment at the change and says she was very fortunate to have had the opportunity to work for the IOI.¹⁶⁵

The Barcelona board meeting in 2006 had endorsed the main thrust of the task force's recommendations on the secretariat: combine the secretary and the administration and house them in an ombudsman's office.¹⁶⁶ The news that Edmonton no longer wished to host the administration cleared an obstacle to that objective and Percy's commitment to continue with the status quo until 2009 allowed time to manage a smooth transition. Certain legal consequences would flow from these decisions. Since 1978, the IOI had been incorporated as a Canadian legal entity with its headquarters in Edmonton. It could establish branch offices, or move its headquarters elsewhere in Canada. What it could not do was move its headquarters somewhere other than Canada. There was also the question of how the balance of funds in the IOI's accounts could be transferred to the new secretariat.¹⁶⁷ In fact, this was resolved in a fairly straightforward manner, with the headquarters formally transferred to the office of the IOI's lawyers in Toronto, while operations would take place at other offices, to be determined, outside Canada. The by-laws were to be amended to remove the power of the University of Alberta to nominate a member to the board of directors.

The Barcelona meeting enlarged the task force, primarily for this central task of moving the secretariat, adding André Marin from Ontario and Song Chul-ho from Korea.¹⁶⁸ The date for completing the transition was the administrative year beginning on 1 July 2009 – conveniently just a matter of days after the international conference and corresponding board meeting in Stockholm. The 2007 board in Sydney would agree arrangements for the new secretariat and the 2008 board, which was held in Hong Kong, would decide on the secretariat's location. Given that the board meeting was held in November, that allowed a bare eight months to manage the transition from Edmonton to the new venue.

The extended task force meeting had come up with a set of principles – essentially criteria for selecting the new secretariat. These were broadly accepted by the Sydney board meeting, which added various other consid-

erations. Some of the key points were as follows. The new secretariat should be funded by the host country, with a financial commitment for a reasonable period of time (eight years being suggested). A host need not be an ombudsman's office, in order not to rule out interested universities. The new secretariat would have to be able to conduct IOI business predominantly in English, with capacity in the other two official languages being an advantage. No board member whose institution or country had indicated an interest in hosting the secretariat could be involved in the process. The host country should be one where there would be no restrictions on travel for IOI members.¹⁶⁹

The Sydney board established an assessment committee to manage the process. The deadline for proposals (which followed expressions of interest) was 1 June 2008. These were then evaluated by the assessment committee and presentations were delivered to the board in Hong Kong.

Two proposals were put forward for consideration in Hong Kong. As with the board procedure for deciding the location of world conferences, the bidding institutions gave presentations, which were followed by a secret ballot. The two bids were from Barcelona, the Ombudsman of Catalunya, and Vienna, the Austrian Ombudsman Board. Both were based upon extremely thorough and comprehensive submissions.¹⁷⁰ The contrast with the University of Alberta's 1978 proposal could not have been more striking. While Frank Jones's document had been highly professional, it was short and contained minimal supporting documentation. The successful Austrian proposal, more than 100 pages of it, in addition to detailed information about the host institution and the proposed accommodation and technical infrastructure, contained statements of support from a variety of figures – including the Austrian President and foreign minister, the mayor of Vienna, and the Austrian parliament. It provided information about Vienna, transport connections, and entry and visa requirements. Importantly, Austrian law would allow the establishment of the IOI as an international non-governmental organization and to transfer its assets to Austria without having to refund the institute. Vienna's history of hosting similar international bodies was undoubtedly persuasive.¹⁷¹

And so, unanimously, the board meeting in Hong Kong decided to transfer the secretariat from Edmonton to Vienna – the most dramatic upheaval in the IOI's history, accomplished in a few short weeks in the second half of 2009. For 31 years, the IOI had been housed in a room on the second floor of the law faculty library, a functional 1960s building. Now it was in the Palais Rottal, in the old quarter of central Vienna, looking out on a courtyard that echoed with the imperial past.¹⁷² The infrastructure, staff of three people, and the operating budget were all drawn from the Austrian Ombudsman Board. These were hardly great riches,

although they may have appeared so in contrast to the modest hand-to-mouth existence of the secretariat over the preceding three decades.

The administrative functions of the IOI had always been subsidized. Now the subsidy was greater and more open. This was one of the most important aspects of the change; not only was there a unified secretariat that provided a bridge between the board and the administration, but also it was far better resourced. This freed funds for other activities, as well as creating new possibilities for fundraising.

The creation of the new secretariat and its transfer from Edmonton to Vienna was the most obvious and visible result of the task force process. It was also the most disruptive and, on occasions, fractious. It was not, however, the only outcome.

One of the continuing problems recognized by many earlier leaders of the IOI but never properly addressed was the lack of day-to-day board involvement in the running of the institute. As Bill Angrick put it in a paper for the task force, the board was “a relatively passive entity, reactive at best.” He noted that the board did little more than ratify decisions of the executive director, executive secretary or president, depending on the particular organizational structure of the day. “It has not been my experience on the Board, until recently, that the Directors themselves were an engine of our organization.”¹⁷³ The reason, of course, was the voluntary nature of board membership, but if this was an explanation it was hardly an excuse. Angrick picked up on Alice Tai’s frequent comment on the need for increased commitment when members agreed to stand for election to the board. Of course, this had existed in the past, with the involvement of highly committed board members such as Roberta Jamieson in the 1990s and Bea Serota in the early years. Perhaps the decline was associated with the end of a system of board committees (such as Jamieson’s on engagement with the United Nations and Serota’s on research). Even so, it is not necessarily clear which way the causal arrow pointed. Did board engagement decline because of the end of the committee system, or was there no enthusiasm for committees because of a lack of board engagement? Whichever was the case, there was no question that at least *some* board members needed to make a greater commitment.

There were other, more technical, ways to address the problem, however. David Percy suggested that board meetings should break into smaller groups “each tasked with a project for intense discussion and completion.” Angrick proposed that the board stop spending its time reviewing past activities and work towards decisions, echoing Barbour’s criticism of board members reading out reports that had already been circulated. He was critical of the board’s failure to make decisions on issues such as membership criteria and fee structure.

Arguably, however, the decision that would most affect board activity would be the proposed changes to the secretariat. It was reasonable to assume that an expanded, professional secretariat headed by a secretary general would have far greater interaction with board members between annual meetings. What eventually emerged was a structure in which the executive committee became a far more effective bridge between the secretariat and the board.

Finally, the task force turned up a whole long list of other issues that needed to be addressed. A number of these were summarized in a 2007 document by Alice Tai, including:

- The IOI needed to develop multi-tiered training programmes for ombudsman offices – for ombudsmen and senior staff on the one hand and for investigators and other front-line staff on the other.
- The IOI should offer a modular training programme to the regions at shared cost.
- The IOI should become the premier source of information for anyone wanting to know about ombudsmen. One of the steps entailed in this would be a radical overhaul of the website, which should be intuitive and easy to use, with access at the very least to all IOI materials and preferably also to source materials such as statutes and reports.
- The IOI should collect materials on performance evaluation, office management and related issues. It should consider developing its own capacity to evaluate member offices.
- The IOI should consider revising the “over-ambitious” objectives in the by-laws to focus on assisting newer ombudsman offices in practical aspects of their work.¹⁷⁴

At the end, the task force had come up with a set of solutions that dramatically fulfilled their brief and radically changed the IOI. Why did this happen now and not earlier, given that the same issues were being debated 10 or even 20 years earlier? One answer, clearly, is that a very competent and hard-working group of people devoted a lot of time to addressing the IOI’s problems and came up with some good solutions. But there had been plenty of good people in the IOI leadership in earlier years who had failed to come up with answers. Ultimately, the most persuasive answer is offered by Bruce Barbour.¹⁷⁵ It was, he argues, an existential issue. The survival of the IOI was at stake. If it could not adapt to new realities and provide members with what they needed, it could not continue. If so, it was the second such moment in the IOI’s history. The survival of the institute had been in the balance in 1988–89 in the aftermath of the Ivany affair. It had been not so much the embezzlement itself that had threatened the IOI’s

existence as the realization that it had come to lack a *raison d'être*. Radical constitutional change and a renewed sense of purpose revitalized the institute in the early 1990s and the same thing was needed to save it for a second time.

* * *

In 2009, for the first and only time, the IOI departed from its timetable of four-yearly conferences. While the task force had discussed whether conferences should be held on a different schedule – either more or less frequently – this one-off change came for a different reason. The year 2009 was the bicentennial of the creation of the ombudsman in the Swedish constitution of 1809. It seemed to all concerned that Sweden should host the conference, for a second time. As it turned out, Stockholm 2009 marked not only a significant anniversary, but also a watershed in the evolution of the IOI.

After the Stockholm conference of 2009, the secretariat moved across continents, from Edmonton to Vienna. A new head of the secretariat, Christine Stockhammer, was responsible for a staff of three, supplemented by interns – still a small office, but substantially more than the IOI had ever had before. Ulrike Grieshofer took over as head of the secretariat in 2012 and was appointed executive director in 2015. Nominally, IOI Canada continued to exist (and to hold small amounts of funds) until David Percy was able to complete its final winding down in 2012.¹⁷⁶ The transition was finally completed that same year, when the world conference in Wellington agreed a new set of by-laws.¹⁷⁷ This had been a priority for the board in the preceding couple of years and really represented the completion of the work begun by the task force.

The secretary-general was a member of the Austrian Ombudsman Board who held the post *ex officio*. From 2009 it was, not surprisingly, Peter Kostelka, who was succeeded on his retirement as ombudsman in 2013 by Günther Kräuter who, like his predecessor, is a former social democratic parliamentarian. (Kostelka remained as an unpaid consultant to the IOI – at his own initiative – in order to ensure continuity in the transition.)¹⁷⁸

In the final phase of the IOI's history, to date, the institute has sealed its transition into an organization that is primarily focused on human rights. One of the amendments to the by-laws in Wellington took account of the desirability of ombudsman institutions adhering to the Paris Principles on national human rights institutions. This was in line with part of the Wellington declaration, which acknowledged that many ombudsmen now constituted their country's NHRI. Even when they did not occupy

that position, the declaration encouraged ombudsmen to cooperate with NHRIs and the IOI itself to cooperate with the International Coordinating Committee of NHRIs.¹⁷⁹ This was a far more confident position than the fumbblings of the late 1990s that ultimately resulted in no relationship between the IOI and the ICC.

The Wellington declaration is important because it also picks up the importance of a function of the IOI that was intermittently advocated in the past, notably by Daniel Jacoby, but never really regarded as central to the institute's work. The declaration states that:

an Ombudsman diligently fulfilling his/her mandate, shall not be subject to any form of physical, mental or unjustified legal coercion.

It also recognizes that financial pressure, by denying resources to ombudsman institutions, is a common and effective way of shackling their work and consequently:

Opposes any financial restrictions which would limit the independence of the Ombudsman and restrict the ability of an Ombudsman to protect the fundamental rights of all persons.

Importantly, this is an issue that has actually been given considerable priority. In 2016, secretary-general Kräuter responded to threats to the mandate and independence of the Polish ombudsman by organizing a delegation led by vice-president Peter Tyndall and European regional president Rafael Ribó to raise the matter with the government of Poland.¹⁸⁰ This issue was seen as being of such centrality that a set of guidelines was developed and it became the focus of the declaration coming out of the next world conference, in Bangkok in 2016.¹⁸¹ The Bangkok declaration illustrates clearly how the modern IOI has come to conform to Bernard Frank's original vision. It begins by demanding that ombudsmen "shall not be subject to any form of physical, mental or unjustified legal coercion." It opposes "any restrictions which would limit the independence of Ombudsman institutions and restrict their ability to protect the fundamental rights of all persons." The declaration condemns "any intimidation and reprisals, such as restrictions of budget, staff or mandate against the independent work of Ombudspersons around the world." It pledges to support member institutions under threat and calls on governments to investigate any intimidation or reprisals against ombudsmen and their staff. That this issue assumed such importance was both a reflection of how far ombudsmen had moved into the potentially more risky and confrontational area of human rights protection and a sign that the IOI intended to move further in this direction. The Bangkok declaration went on to encourage ombudsmen to call on their own governments to protect human rights, even when this was not formally part of their mandate.

There was both an irony and an aptness about the fact that Bangkok was the venue for this clear declaration of intent to defend ombudsmen as human rights defenders. The choice of Bangkok was made before the Thai military seized power in 2014. While there was little disagreement about going ahead with Bangkok as the location, there were different views within the IOI on how to address the poor human rights record of the government. Some European ombudsmen were opposed to raising domestic human rights issues. The prevailing view was that these could not be ignored. The approach was non-confrontational, but a meeting of the IOI leadership with non-governmental organizations and a press conference left no doubt about the institute's position.

Gender

Look at picture number 9 on page 63. Do you notice anything odd about it? (It was taken at an IOI board meeting in the mid-1980s.)

The answer, of course, is that of the fifteen people in the picture, not a single one is a woman.

The IOI is the International Ombudsman Institute. Some of the institute's members have gender neutral titles, such as Defender, Protector or Inspector. There are even one or two Ombudspersons. Generally, however, the name ombudsman has been retained, along with assurances that in the original Swedish the word is gender neutral. However, this works only if the actual practice in the world of ombudsmen does not discriminate on gender grounds. The IOI board photo is indicative of the problems that have existed.

By contrast with the 1980s, one of the striking changes in the IOI has been the increased role of women in its leadership. In truth, the bar was set very low at the beginning. For more than a decade, only one woman, Bea Serota from the United Kingdom, had been a member of the board. As noted in Chapter 2, when Stephen Owen addressed the board in 1989 on the question of whether the institute should continue in existence, his audience was a room full of men.

Other women played a part in the early years. Inger Hansen from Canada and Lieselotte Berger from Germany contributed to the early international conferences and helped determine important questions about the IOI's mandate and structure. And, of course, the secretariat of the institute has almost exclusively been staffed by women. Otherwise, in the 1970s and 1980s, most of the women attending IOI events appeared in the role of wife. Typically, wives were invited (and

attended) conferences and board meetings. In one important instance a woman, Marina Vontobel, acted as interpreter and assistant to her severely disabled husband. Most, however, had no such role.

Of course, this only reflected the outside world of ombudsmanship, where office-holders were overwhelmingly male. Even if the IOI of the 1980s had wanted to make an effort to promote women into leadership roles – and there is no evidence that it did – it would hardly have had a pool of candidates to choose from. The woman who did have an enormous impact on the IOI in the 1990s was Roberta Jamieson, the Ontario ombudsman who had already overcome much greater obstacles as the first indigenous Canadian woman to qualify as a lawyer. She says of her time on the board that she was “used to being the only woman.” She says that some board members “thought they were the height of fairness,” yet were seemingly unaware of the bias in their own attitudes to gender. She contrasts them with others, such as Stephen Owen and Daniel Jacoby, who were “very progressive.”¹⁸² Jamieson’s impact was not because of any explicit feminist agenda within the IOI, but as a result of a critical approach to the work and impact of ombudsman institutions. Instead of assessing ombudsmen’s work from the narrow perspective of the ombudsman herself, Jamieson viewed matters from the perspective of the populations that the institution was designed to serve (a role that she was uniquely qualified to play among her IOI contemporaries).

A later female leader of the IOI, Dame Beverley Wakem, the first woman president, talks about “unleashing the power of women.” This is important because it views women’s leadership role not in terms of ending gender discrimination so much as unlocking a new set of skills and capacities that were previously lacking in the institute. That was certainly true of Jamieson’s impact and the same could be said of a number of other prominent women that Wakem lists: Alice Tai, Ann Abrahams, Emily O’Reilly, Thuli Madonsela, and Arlene Brock.¹⁸³ Wakem herself should be added to that list, along with the IOI’s current vice-president Diane Welborn, and regional presidents Nilda Arduin, Connie Lau, and Caroline Sokoni.¹⁸⁴

Of course, the increasing role of women in the institute (and their marginal role in the early years) reflects in part the changing world of ombudsmanship. At a time when there were almost no women ombudsmen, it would have been impossible to have extensive representation at the highest levels of the IOI. That the institute took 32 years to elect its first woman president reflects less well on it, however.

More broadly, the human rights focus became central to the IOI's work after the move to Vienna. Partly, of course, this reflects changes in the outside world. One of the major developments in the world of national human rights institutions has been the Optional Protocol to the United Nations Convention Against Torture (or OPCAT). The OPCAT requires states that are party to the treaty to create national preventive mechanisms, which are endowed with certain specified legal powers to enable them to carry out regular (and often unannounced) visits to places of detention and imprisonment. The aim of this preventive monitoring is to eliminate torture and other forms of ill-treatment in all types of closed institution. These national preventive mechanisms are often constituted by pre-existing NHRIs, which in turn are often ombudsman institutions. For ombudsmen, whose prior experience revolved mainly around handling individual complaints, this has entailed a major reorientation. Where previously their work was largely responsive, prior planning and prioritization has now become essential. In addition, and most importantly, the personnel of ombudsman institutions with NPM duties now require a whole new set of skills relating to monitoring conditions, procedures and treatment in a wide variety of closed institutions, from psychiatric hospitals, through police stations, to prisons. The IOI made it one of its priorities to equip its member institutions with these skills.

Another issue that assumed importance for some ombudsmen – and hence for the IOI – towards the end of this period was the global refugee crisis. There were several new elements in the refugee crisis of the mid-2010s, from the ombudsman's perspective. Most important were its unprecedented scale worldwide and the fact that many ombudsmen found themselves thrust into the front line by virtue of their OPCAT role. One of the types of closed institution subject to NPM visits was the immigration detention centre. Southern European ombudsmen found themselves visiting detained refugees and other migrants and took the initiative to give advice and to advocate more broadly on their behalf. These institutions, along with Günther Kräuter and the IOI, were prime movers in a conference in Belgrade in late 2015, which issued a strongly worded declaration throwing the authority of national human rights institutions behind the refugees.¹⁸⁵ This followed an open letter from the IOI, signed by president John Walters, European regional president Irena Lipowicz, the Polish Ombudswoman, and Günther Kräuter, calling on ombudsmen, the European Union and the African Union to address the refugee crisis:

We have to emphasize the necessity to conjointly advocate the observance of human rights for the full realisation of human dignity, not just within Europe but also beyond its borders, where political instability and economic hardship push many people into despair and thus into exploitation and ultimately the risk of death.

The IOI – on behalf and together with its members – is therefore ready and willing to assist wherever necessary and within its powers, to find a solution to this imminent threat to human beings and gross human rights violations.¹⁸⁶

While the eye-catching change in 2009 was moving the secretariat, the task force had been at least as much concerned by the inefficiency and ineffectiveness of the workings of the board. As described, some of these issues had been addressed from the mid-2000s as they were identified by the task force. One very important post-2009 development was the restoration of a committee system that meant that board members are now permanently engaged on at least one issue continuously between board meetings. In addition, the frequency and depth of communication between meetings has improved immeasurably. This, of course, is largely a result of merging the administration and secretariat under a secretary-general.

The relevance and professionalism of the board was also enhanced by the increased role and status of the regional vice-presidents – upgraded in name and authority to regional presidents. The more federal structure that emerged meant that the board increased its organic links to the membership, via the regions, rather than being a remote entity that only functioned once a year. The regions themselves were supported by financial subsidies, reversing the pre-2009 situation where regions were net contributors to the central budget. While membership continued to grow, however, with nearly 190 members as the 40th anniversary approached, the regional profile of the IOI remained uneven. Africa became an increasingly important growth area, helped by the presidency of the Namibian ombudsman, John Walters (2014–16), the first African to hold the top position in the IOI. The increased weight of Africa in the IOI reflected democratization and the proliferation of ombudsman institutions. Regional structures helped. The African Ombudsman and Mediators Association is the successor to the African Ombudsman Association established in 1990. The African Ombudsman Research Centre is now under the strong leadership of former IOI board member Arlene Brock from Bermuda. Walters attributes the growth of African influence in the IOI to the strength of these regional bodies, although the region's ombudsmen almost all suffer from severe financial constraints.¹⁸⁷

Latin America, by contrast, remained problematic. In the early 1990s, the surge in new ombudsman institutions in the region suggested that this would become part of the IOI's core and certainly helped to drive the new multilingual approach adopted at that time. Yet many Latin American institutions lost IOI membership when they defaulted on fee payments and the process of bringing them back in has been a slow one. Development of the IOI in Latin America received a setback with the untimely death in 2014 of board member Edgardo Bistoletti, from Santa Fe, Ar-

gentina.¹⁸⁸ Asia is an important growth area, although few institutions in the region share the new emphasis on human rights. The historical core of the IOI membership, North America, Europe, and Australasia and the Pacific, continues to grow and develop.

One of the notable features of the post-2009 IOI, which partly explains its ability to deliver so much more in the way of training to members, is the series of agreements between the institute and partners with the expertise to train in specific areas, notably the Association for the Prevention of Torture (in relation to monitoring closed institutions) and the International Anti-Corruption Academy.¹⁸⁹ There were repeated workshops on the themes covered by these partners. In addition, there were an increasing number of training events on complaints handling and more traditional aspects of the ombudsman role. An important partner in this – and the one with the longest standing in the training field – was the Ontario Ombudsman, which presented successive versions of its Sharpen Your Teeth training package. Queen Margaret University in Edinburgh, Scotland, also became a regular training partner on complaints handling. Others, such as the New South Wales Ombudsman, contributed in this area as well, specifically on how to deal with unreasonable complainants. This model – repeated delivery of the same training package, somewhat customized, to different audiences – was precisely what the IOI had been trying to do back as far as the late 1990s. Despite some isolated early achievements, this was now working consistently, with training events delivered in all three official languages of the institute.

In the post-2009 period the IOI has successfully addressed many of the shortcomings identified by the task force, yet this has not meant the elimination of disagreement. The trend in the development of the institute's by-laws has generally been one of democratization, with member institutions acquiring increasing control over governance. One welcome development was a resolution to the perennial issue of how poorer institutions can afford subscription fees. This has been resolved by a three-tier fee structure based on the budget of the institution, elaborated by then treasurer and later second vice-president Chris Field, ombudsman of Western Australia.

The problem, on occasions, has been that what looks like democracy from one perspective appears as domination when seen from a different angle. The most divisive constitutional change in the recent period has been the decision, originally adopted by the board in Zambia in 2011, to assign an additional board member to the Europe region.¹⁹⁰ The rationale, clearly, was that Europe had the largest number of institutional members. John Walters described it as Europe “recolonizing Africa,” although by 2017 he had accepted the change.¹⁹¹ Peter Tyndall, the Irish Ombudsman

who succeeded Walters as president, was a European who opposed the move. He notes that the Europeans had already created antagonism in Stockholm by withdrawing support from Bruce Barbour as vice-president in favour of the Swede Mats Melin. Tyndall has very negative recollections of the Wellington conference where this change was adopted, saying that he was ready to walk away from the IOI. The incoming president, Bev Wakem, persuaded him to stay on, arguing for incremental changes that would improve democracy. Ironically, the immediate impact of increasing European representation was to provoke a reaction elsewhere in the membership, which meant that after Wellington there were no European representatives on the Executive Committee (ExCom). In the longer run it has triggered attempts to redress the balance – for example, from Asian members arguing that representation should be on the basis of population. Also, and more constructively, there has been more progress in democratizing the IOI's internal processes, as Wakem had promised. Wakem herself, Walters, and Tyndall have all been unifiers, while Kräuter's role as secretary-general is described by Tyndall as "very calm and moderating."¹⁹² The Caribbean and Africa, which did not have ExCom representation immediately after Wellington, were invited to attend and plans are underway to ensure representation of all regions through direct universal elections of the institute's officers. This will be done by electronic voting. Tyndall hopes that this will mean an end to caucuses and a more serious consideration of the candidates' merits. Once again, however, not everyone's idea of democracy is identical. John Walters is not in favour of what Tyndall and its advocates call "universal suffrage." He maintains that "we should trust the board" to nominate the most qualified candidates for the IOI's top offices.¹⁹³

* * *

Remote electronic voting is just one example of how both the activities and the governance of the IOI have changed. Frank Jones's initial proposal for the Edmonton secretariat was forward-looking in its embrace of information technology, yet financial constraints in the early years always limited its impact. The techniques of outreach and internal governance available to the IOI in 2018 – electronic voting, video-conferencing, an extensive website, and social media – might have appeared gimmicky to earlier generations but now seem essential to running an international organization in the modern world. Even a simple innovation, such as the recent introduction of translation software to the website, has a potentially enormous impact. Sometimes the IOI has been slow to grasp these opportunities, but in recent years the embrace of modern communication tech-

niques has helped the inclusion of member institutions in some of the poorest countries.¹⁹⁴ Some of the challenges that seemed so difficult to the IOI leadership in earlier years now turn out to be relatively straightforward.

Given that world ombudsman conferences are held once every four years, it might have been expected that the IOI's 40th anniversary would be marked by a major celebratory gathering. But of course, it was the first international conference that decided to initiate the IOI, not the other way round, and so the public launch of the institute came at the second conference in 1980, two years after it had formally come into being. The last world conference, in Bangkok on the 38th anniversary, was suitably forward-looking, which is surely the best way to mark the past decades of achievement. In Bangkok, the issues were defending ombudsman institutions, further developing the capacity of ombudsmen to address their human rights mandate, and how to grow the IOI still further. The next 40 years will have to look after themselves, but this was a good vision for the next four years – and one that Bernard Frank would have recognized.

Endnotes

- ¹ Examples of teleological approaches to history include Marxism, the “Whig interpretation of history”, and Francis Fukuyama’s notion of the “end of history.”
- ² IOIA *Report of the Proceedings: Second International Ombudsman Conference, Jerusalem 1980*.
- ³ Interview with Frank Jones, Edmonton, September 2016.
- ⁴ *The Morning Call* (Allentown PA), Bernard Frank obituary, 23 January 2002.
- ⁵ Jones interview, September 2016.
- ⁶ In a report of the ABA Ombudsman Committee in 1971 and the IBA Ombudsman Committee in 1974.
- ⁷ IOIA Bernard Frank scrapbook containing meeting transcript.
- ⁸ IOIA *Report of the Proceedings: First International Ombudsman Conference, Edmonton 1976*. The subsequent account of the conference discussion is based on the verbatim text in the record of proceedings.
- ⁹ “Powles, Guy Richardson,” *Dictionary of New Zealand Biography*, 5th ed, 2000.
- ¹⁰ IOIA International Ombudsman Steering Committee, The Ombudsman Institute (proposal from Faculty of Law, University of Alberta), 21 April 1977.
- ¹¹ IOIA, Minutes of the International Ombudsman Steering Committee, Paris, 9 May 1977. The discussion that follows is drawn from this extensive record.
- ¹² Oliver Dixon was not himself the potential host, but the meeting considered a written proposal from the New South Wales Ombudsman and Dixon answered questions.
- ¹³ IOIA Randall Ivany, To Ombudsman Members of the International Ombudsman Association [sic], 23 January 1978.
- ¹⁴ IOIA Canada Corporations Act, Letters Patent: International Ombudsman Institute, 13 February 1978.
- ¹⁵ IOIA Agenda (with Appendices), Meeting of the Board of Directors of the International Ombudsman Institute, Edmonton, 20–22 September 1978; Minutes of the Annual Meeting of the Board of Directors of the International Ombudsman Institute, Edmonton, 21 September 1978.
- ¹⁶ While the title sounds grand, “baroness” merely means that she was an appointee to the United Kingdom’s unelected upper house of the legislature.
- ¹⁷ IOIA Bernard Frank, scrapbook.
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- ¹⁹ IOIA Guy Powles, Memorandum to the Board, 28 July 1978.
- ²⁰ Quotations are from Powles’s summary of responses, which are not necessarily a verbatim rendition of the letters themselves.

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- ²⁴ Jones interview, September 2016. Powles's entry in the *Dictionary of New Zealand Biography* notes "a respect for conformity and discipline that could amount to rigidity." It also notes his "humanitarian instincts, curiosity and sense of fairness," as well as "his quiet sense of fun."
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- ²⁶ Interview with Sir Brian Elwood, August 2017.
- ²⁷ Interview with Günther Kräuter, Vienna, July 2016.
- ²⁸ Article 2(1).
- ²⁹ The following account is based on IOIA *Proceedings of the Second International Ombudsman Conference*, Jerusalem, October 1980.
- ³⁰ IOIA Statement of Work Completed from May, 1979, nd (c. 1980).
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- ³² IOIA Minutes of the International Ombudsman Institute 4th Annual Board of Directors Meeting, Edmonton, 23–24 September 1981.
- ³³ IOIA Ulf Lundvik, Some thoughts about the future of the International Ombudsman Institute, nd (c. 1980).
- ³⁴ IOIA Report of research committee, Board of Directors, 1986.
- ³⁵ IOIA Proposal to the Canadian International Development Agency Management for Change Program by the International Ombudsman Institute Regarding Assistance to the Nigerian Public Complaints Commission, Lagos, Nigeria, February 1984 (and attached correspondence).
- ³⁶ IOIA Minute of the International Ombudsman Institute 4th Annual Board of Directors Meeting, Edmonton, 23–24 September 1981.
- ³⁷ Interview with William Angrick, 3 August 2017.
- ³⁸ IOIA Ombudsman Seminar – Stellenbosch, South Africa, Report by Alex B Weir, Chairman, International Bar Association Ombudsman Forum, nd (1982?).
- ³⁹ *Ibid.*
- ⁴⁰ IOIA Randall Ivany to Christopher Milton, 10 May 1984.
- ⁴¹ *Ibid.* A similar dispute was taking place concurrently within the IBA. Alex Weir had in 1984 appointed Milton as regional director – a move of stunning political insensitivity, given African attitudes towards the South African "homelands". The appointment was heavily criticized, not only among African members, but also in Canada. IOIA Charles Ferris to Christopher Milton, 18 April 1984; Alex Weir to Christopher Milton, 30 April 1984; Christopher Milton to Charles Ferris, 4 May 1984.
- ⁴² IOIA Minutes of the Ninth Annual Meeting of the Board of Directors of the International Ombudsman Institute, Edmonton, 4–5 May 1987. The following discussion is drawn from these fairly extensive minutes.
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- ⁴⁴ IOIA Minutes of the Ninth Annual Meeting of the Board of Directors of the International Ombudsman Institute, Edmonton, 4–5 May 1987.
- ⁴⁵ IOIA Annual Meeting of Board of Directors, Vienna, 10 October 1992.

- ⁴⁶ IOIA Memorandum to IOI Board of Directors from Linda Reif: Development of IOI Board Policy Re Publication of News Items and Manuscripts Concerning South Africa and the South African Homelands in IOI Publications, 22 September 1993.
- ⁴⁷ Interview with Fiona Crean, former Toronto Ombudsman, October 2017; Office of the Toronto Ombudsman, *The Impact of Ombudsman Investigations on Public Administration: A Case Study and Evaluation Guide*, January 2015.
- ⁴⁸ Interview with Ulrike Grieshofer, Vienna, March 2017.
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- ⁵¹ IOIA Memorandum by Randall Ivany, nd (1984).
- ⁵² Callan interview, August 2017.
- ⁵³ IOIA Minutes of the meeting of the Board of Directors of the International Ombudsman Institute, Sydney, 18–19 April 1985.
- ⁵⁴ IOIA Minutes of the Ninth Annual Meeting of the Board of Directors of the International Ombudsman Institute, Edmonton, 4–5 May 1987.
- ⁵⁵ IOIA President's remarks (Appendix to agenda of 1987 board meeting).
- ⁵⁶ Jones interview, September 2016.
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- ⁵⁸ Christian interview, September 2016.
- ⁵⁹ IOIA Minutes of the Special Meeting of the Board of Directors of the International Ombudsman Institute, Canberra, 25 October 1988.
- ⁶⁰ IOIA Notes of Meeting of Members of the International Ombudsman Institute, Canberra, 25 October 1988; Minutes of the Special Meeting of the Board of Directors of the International Ombudsman Institute, Canberra, 25 October 1988.
- ⁶¹ Interview with Stephen Owen, Vancouver, September 2016.
- ⁶² IOIA International Ombudsman Institute, Annual Meeting of Board of Directors, Vienna, 18–19 May 1989. The discussion that follows is based on these minutes, as well as the recollections of Owen and Christian.
- ⁶³ Interviews with Christian and Owen, and with Peter Kostelka, Vienna, March 2017.
- ⁶⁴ IOIA By-laws as amended, 1989.
- ⁶⁵ In interviews, Jones, Christian, and Owen all spoke highly of Vontobel, as did Bernard Frank in his private diary entries contained in the scrapbooks now held in the IOIA.
- ⁶⁶ Owen interview, September 2016.
- ⁶⁷ *Ibid.*
- ⁶⁸ Interview with Linda Reif, Edmonton, September 2016.
- ⁶⁹ "Many have lost their lives for us. We have a responsibility to do our part and that is to ensure as best we can, that our servicemen and their dependants are not sacrificed by complacency, incompetence, ignorance and by Governments and top brass who regard servicemen as pawns to be used indiscriminately and without accountability." <https://vajexaustralia.org.au/guest-speakers-public> (last accessed, 12 October 2017).
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- ⁷¹ IOIA Board of Directors Meeting 5–7 October 1993.
- ⁷² IOIA Arne Fliflet, Development of Ombudsman Role in Eastern Europe, October 1993.
- ⁷³ Interview with Marten Oosting, August 2017.
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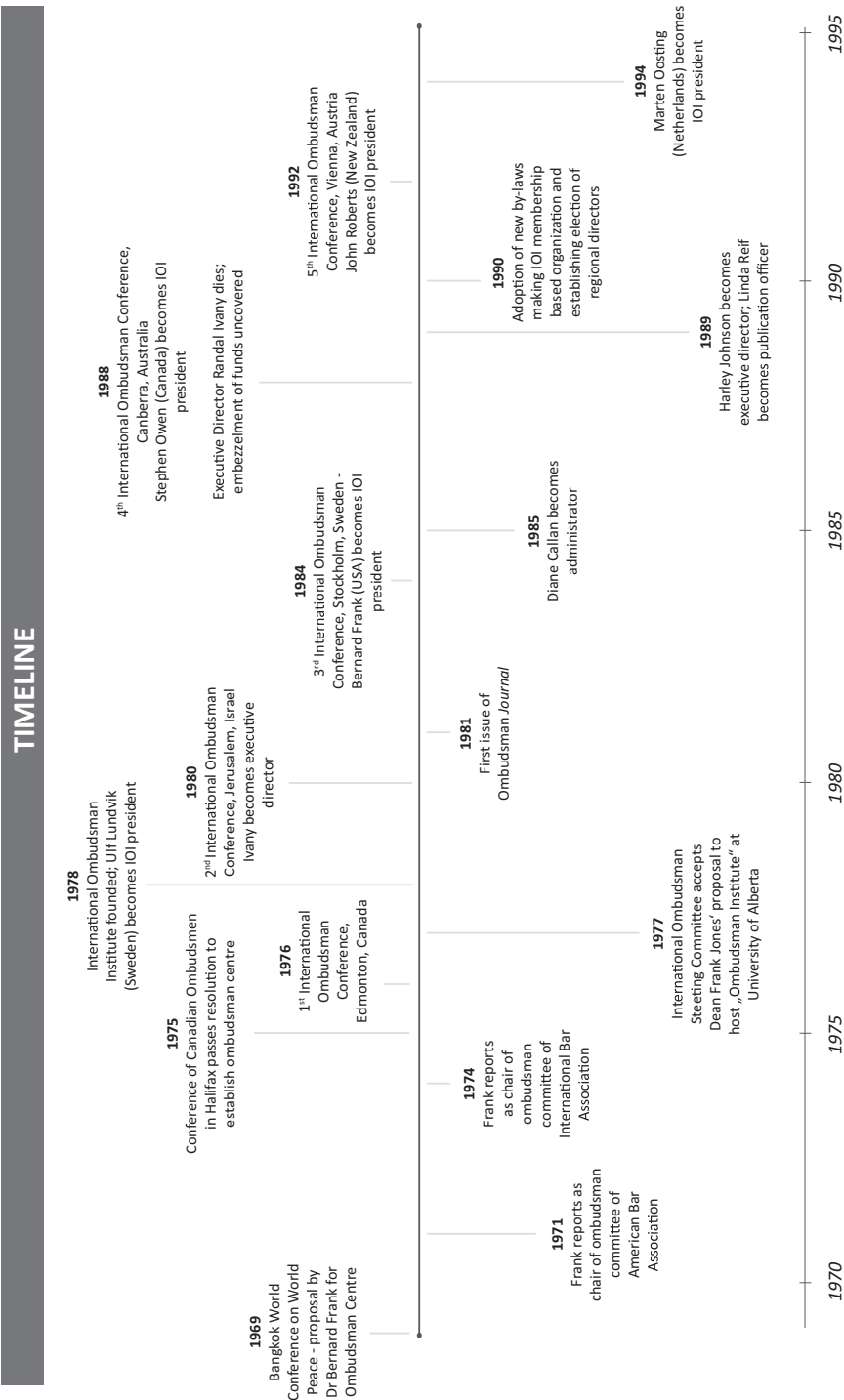
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- 103 Interview with Lewis Klar, Edmonton, September 2016.
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- 105 Communication from André Sasseville, 31 December 2017.
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- ¹¹¹ IOIA Board of Directors Meeting, The Hague, 16–18 October 1995.
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- ¹²⁵ Interview with Alice Tai, September 2017.
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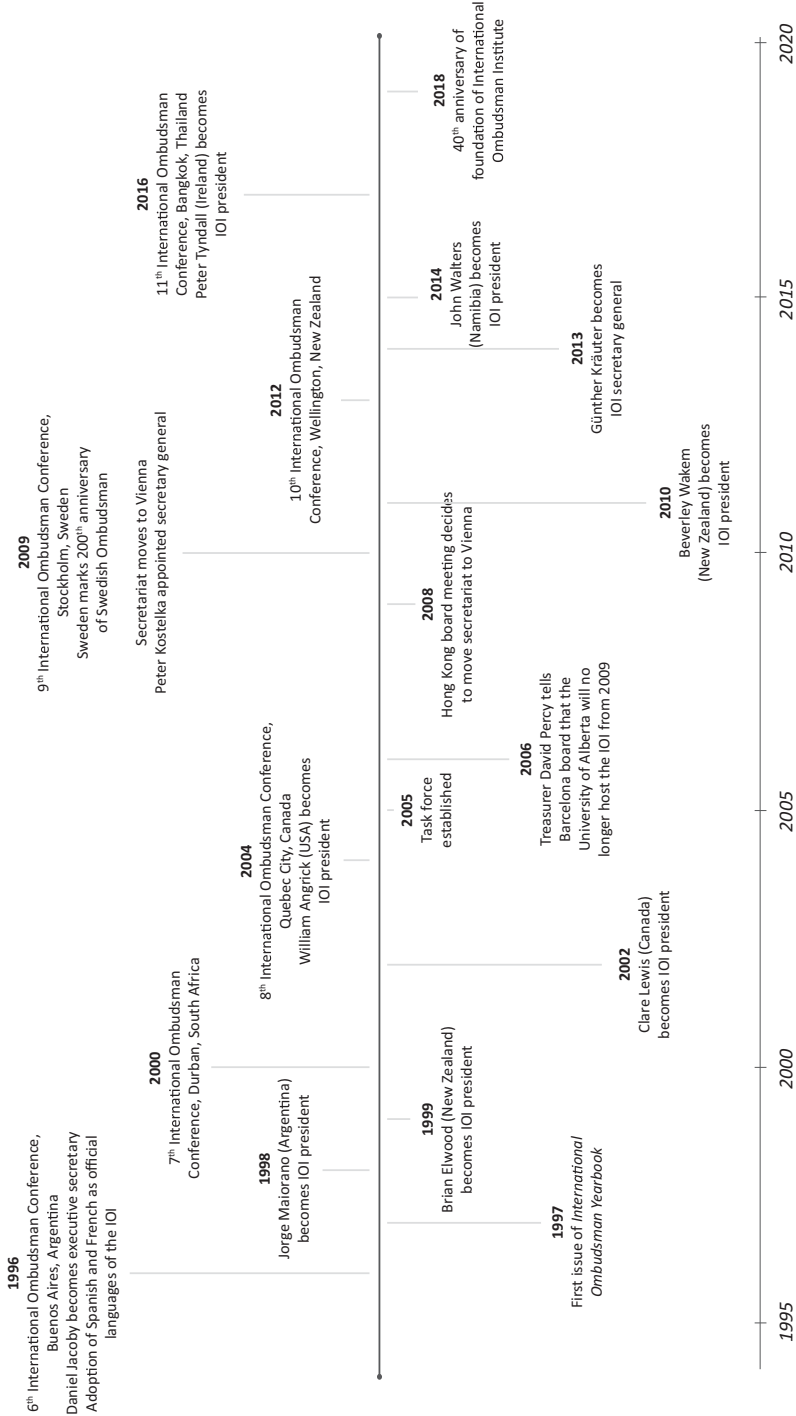
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- 185 Declaration on the Protection and Promotion of the Rights of Refugees and Migrants, November 2015: http://ennhri.all2all.org/IMG/pdf/belgrade_declaration_en.pdf.
- 186 John R. Walters, Günther Kräuter, Irena Lipowicz, Open letter concerning the Mediterranean refugee crisis: <http://www.theioi.org/downloads/4ahel/IOI%20Open%20Letter%20Mediterranean%20crisis.pdf>.
- 187 Walters interview, December 2017.
- 188 Kräuter interview, March 2017.
- 189 IOIA Board of Directors Meeting, Vienna, Austria, 27–29 October 2014, Summary of Board decisions.
- 190 IOIA Board of Directors Meeting, Livingstone, Zambia, 30 October–2 November 2011, Summary of Board decisions.
- 191 Walters interview, December 2017; Interview with Peter Tyndall, December 2017.
- 192 Tyndall interview, December 2017.
- 193 Walters interview, December 2017.
- 194 *Ibid.*

Appendix



TIMELINE



Structure of IOI Admin Bodies 1978

BOARD OF DIRECTORS
(members of IOI)*



Executive Committee	IOI President IOI Vice-President IOI Secretary-Treasurer IOI Executive Director Dean of Law, University of Alberta
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* Board of Directors initially appointed by International Ombudsman Steering Committee, thereafter appointing its own successors. In law, Directors were the membership of the IOI (and the Officers were the Directors).

Structure of IOI Admin Bodies 2018

GENERAL ASSEMBLY

(Voting members)



Pursuant to Article 11.1(c) of the IOI By-laws, the Voting members of each Region elect their representatives to the IOI Board of Directors:

- a max. of 3 Directors where there are less than 30 Voting members
- a max. of 4 Directors where there are 30 or more Voting members
- a max. of 5 Directors where there are 60 or more Voting members

Pursuant to Article 22.3(b) of the IOI By-laws, the Voting members of each Region then elect a Regional President (RP) from amongst the elected Directors of the Region.



IOI Board of Directors					
Africa	Asia	Australasia & Pacific (APOR)	Caribbean & Latin America	Europe	North America
RP	RP	RP	RP	RP	RP
Board Member	Board Member	Board Member	Board Member	Board Member	Board Member
Board Member	Board Member	Board Member	Board Member	Board Member	Board Member
				Board Member	
				Board Member	



Pursuant to Article 19.2 of the IOI By-laws, the Officers of the IOI, i.e. the President, the two Vice-Presidents and the Treasurer, shall be elected by the Board from amongst its members. As of 2020 a new election process will be implemented and the Officers will be elected by electronic means by all Voting members.

Executive Committee	IOI President
	IOI 1 st Vice-President
	IOI 2 nd Vice-President
	IOI Treasurer
	IOI Secretary General*

** Pursuant to Art. 20.1 of the IOI By-laws the Secretary General is appointed by the members of the Austrian Ombudsman Board from amongst its members.*

List of MoUs

MEMORANDA OF UNDERSTANDING

In the past the IOI signed Memoranda of Understanding with the following partner associations and organisations:

September 2017	OSCE Office for Democratic Institutions and Human Rights (ODIHR)
June 2017	Caribbean Ombudsman Association (CAROA)
May 2017	Forum of Canadian Ombudsman (FCO)
October 2016	Association des Ombudsmans et Médiateurs de la Francophonie (AOMF)
May 2016	Ombudsman Association (OA)
April 2016	Federación Iberoamericana del Ombudsman (FIO)
September 2015	Australian and New Zealand Ombudsman Association (ANZOA)
March 2015	International Coordinating Committee (ICC) of National Human Rights Institutions (now: Global Alliance of National Human Rights Institutions or GANHRI)
October 2014	Instituto Latinoamericano del Ombudsman – Defensor del Pueblo
April 2013	African Ombudsman and Mediators Association (AOMA)
November 2012	International Anti-Corruption Academy (IACA)