

WOMEN AND PUBLIC INTERNATIONAL LITIGATION

Background Paper prepared for the Project on International Courts and Tribunals

Jan Linehan¹

Introduction

This Background Paper looks at the participation of women as judges and advocates before a range of international courts and tribunals. The object is to provide background information and suggest strategies for increasing participation, as well as further research directions.

The 12 bodies in the survey are the International Court of Justice, International Tribunal for the Law of the Sea, World Trade Organization, International Centre for Settlement of Investment Disputes, European Court of Justice, Inter-American Court of Human Rights, European Court of Human Rights, African Court of Human Rights, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, International Criminal Court and the World Bank Inspection Panel.

The Annex contains a description of the selection process for each body and details of participation of women as judges or members. In the case of women advocates, only some of these bodies were included in the survey. The results are described below and the background material is on file with PICT. The Paper was originally prepared in mid-2001 and has been updated to take account of developments to 1 September 2002.

Women as Judges or their equivalents on international courts and tribunals

The Survey

Women are absent from or under-represented on each of the 12 bodies in the survey (see Table A). Of the 173 positions surveyed, only 26 are held by women. The first and only woman judge on the International Court of Justice was elected in 1995. Women are not represented on the International Tribunal for the Law of the Sea, WTO Appellate Body or the Inter-American Court of Human Rights. The European Courts fare somewhat better. The European Court of Justice has 2 women judges and 1 woman Advocate-General. The Court of First Instance has 2 women among its 15 members. The European Court of Human Rights has 10 women judges out of 41 members. On the 2 international criminal tribunals, the number of women permanent judges remains low (1 woman judge on the International Criminal Tribunal for former Yugoslavia - down from 2; and 3 women judges on the International Criminal Tribunal for Rwanda). However, 5 of the 9 *ad litem* judges appointed to the ICTY in 2001 are women. Women are appointed only infrequently as members of ad hoc bodies, such as arbitration tribunals under the auspices of the International Centre for Settlement of Investment

¹ The original version of the paper was commissioned by the Project for International Courts and Tribunals for the seminar held by PICT and Matrix Chambers on 13 July 2001 in London. This version, which is current as of 1 September 2002, does not include new figures on the participation of women as advocates before international tribunals. For more information on the International Criminal Court see T. Ingadottir, *The International Criminal Court Nomination and Election of Judges, A Discussion Paper*, PICT, ICC Discussion Paper # 4, June 2002. The author would like to thank Philippe Sands, Thordis Ingadottir, Sally Kenny, Barbara Bedont, Pam Spees, Indira Rosenthal, Carol Pollack, Sabine Semmelroth, Gabrielle Marceau, Margarete Stevens, Nora Binder, Radu Popa, Patricia Visseur - Sellers, Cate Steains, Robyn Moody, Angela King, Jane Connors and Carolyn Hannan for their input. The views expressed in this paper and any errors are solely those of the author.

Disputes or panels under the WTO. Although in both cases, the number of women members appointed has increased slightly over the last few years.

To the extent that a trend is discernable, it seems more women are being nominated and appointed to the European courts, but nomination and election of women remains non-existent or low for other bodies.² Generally speaking, women are disproportionately represented on human rights or women's rights bodies. Within the UN human rights committee system, women are disproportionately represented on the Committee for the Elimination of Discrimination Against Women.³

As discussed below, there has been some recognition in the human rights and humanitarian law fields of the need for greater participation of women, but this remains uneven. At a formal level, only the African Court of Human Rights and International Criminal Court have rules that make specific reference to women's participation as judges. The African Protocol has not yet come into force. The International Criminal Court has just come into force, so the requirement in Article 36 (8)(a)(iii) of the Rome Statute that the State Parties in the selection of judges take into account the need for "a fair representation of female and male judges" is about to be tested. The first meeting of the Assembly of State Parties in September 2002 is to consider possible rules and procedures on the nomination and election of judges. The election for the 18 judges of the ICC will take place in early 2003. It is unclear whether the Assembly of States Parties will be able to agree on procedures that would ensure that a "fair balance" is achieved. Current proposals concentrate largely on encouraging states to nominate more women (e.g., at least 9 female candidates) and there are no proposals that would ensure that any particular number of seats would go to women candidates.⁴ A broad range of NGOs and women's groups are lobbying governments to find and nominate women candidates, but it remains to be seen whether governments will respond either in their choice of nominees or their voting intentions. If the elections in early 2003 do not produce something close to a "fair balance" of female and male judges, it can be expected that there will be intense pressure to re-examine options that would ensure that effect is given to the requirement in Article 36 (8)(a)(iii).

The African Court and the two International Criminals Tribunals also have rules for the consideration in the nomination process of the importance of women's participation (in the case of the tribunals, this applies only to *ad litem* judges.) The European Court of Human Rights has a rule requiring a policy aimed at gender balance for internal appointments, i.e., the

² No institution surveyed keeps statistics on women's candidacies. The comment is based on secondary sources, a survey of several recent elections and discussions with court and tribunal staff. It is clear that there have been few woman candidates nominated for non-regional institutions. For example, there has only been 1 female candidate for the ICJ and ITLOS respectively. While states seldom put forward women candidates for permanent positions on the 2 international criminal tribunals, a number of women candidates were nominated and elected as *ad litem* judges for the ICTY (a pool of additional judges to be appointed as necessary). In the election in 2001, there were 14 women out of 64 candidates and of the 27 judges elected, 9 were women. Subsequently, 5 women and 4 men were appointed. Also 2001 saw the nomination and election of 2 women to the International Law Commission, a previously all male body, many of whose members become international judges or advocates.

³ For example, the Human Rights Committee (2 women out of 18 members); Committee on the Elimination of Discrimination Against Women (22/23); Committee on the Elimination of Racial Discrimination (2/18); Committee on Economic, Social and Cultural Rights (1/18); Committee Against Torture (1/10); and Committee on the Rights of the Child (6/10).

⁴ See the proposed resolution on the first elections, see UN PCNICC/2002/2, Annex 12, dated 24 July 2002. Under Articles 12 (c) and 13(a), the President of the Assembly is to notify states one month before the close of the nomination period if the number of female candidates is below a certain threshold and may extend the election period by 1 month if there are fewer than 9 candidates for each gender. By this time it is probably too late because most states will have settled on their candidates. For other proposals, in particular for a distribution formula that would ensure a certain number of seats to women judges, see T. Ingadottir, *PICT Discussion Paper*, note 1, at 37-9.

appointment of Presidents, Vice-Presidents, Registrars and Deputy Registrars. In respect of non-judicial appointments, the Statute of the International Criminal Court requires the Prosecutor and Registrar in appointing staff to take into account fair representation of men and women.

Interest in Women's Participation

The low participation rates of women in international courts and tribunals only seem to attract attention when women are absent, as was the case for most international bodies until the mid to late 1990s, or where there is a clearly identified "gender dimension" to the work of the body concerned. Writing in 1991, Hilary Charlesworth, Christine Chinkin and Shelley Wright identified the absence of women from international courts as part of the systemic exclusion of women from the institutions responsible for international law-making.⁵ However, little attention was paid to the issue in most cases and what little attention there was disappeared once the first appointment was made. The election of the first woman to the International Court of Justice in 1995 is a good example. Similarly, the failure to appoint a woman judge to the European Court of Justice became an issue in the European Parliament and European press in the late 1980s.⁶

More recently, the participation of women judges has become a significant issue for the international criminal tribunals and the International Criminal Court. This can be largely attributed to the efforts of the women associated with the Tribunals, feminist academics and women's NGOs.⁷ It is now accepted that crimes against women are a central part of the work of the Tribunals. Judge Pillay's role in prompting the inclusion of allegations of rape and sexual assault in the *Akayesu* genocide case before Rwanda Tribunal is often cited in support of the importance of including women judges.⁸ The experience with the Tribunals was influential in the inclusion in the 1997 Rome Statute of a requirement to take into account "fair representation of women" in the Court's composition.⁹ Lobbying by women's NGOs and the support of sympathetic states was crucial on this point.¹⁰ More recently, the United Nations has

⁵ H. Charlesworth, C. Chinkin, and S. Wright, 'Feminist Approaches to International Law', 85 *American Journal of International Law* (1991) 613; H. Charlesworth, 'Transforming the United Men's club: feminist futures for the United Nations', 4 *Transnational Law & Contemporary Problems* (1994) 421 and H. Charlesworth and C. Chinkin, *The Boundaries of International Law* (2000) ("*Boundaries*").

⁶ See S. Kenny, 'The Members of the European Court of Justice of the European Communities,' 5 *Columbia Journal of European Law* (1998/99) 101 at 125-6, note 103. The first woman Advocate-General was appointed by France in 1981 and served 3 years. The first woman judge was appointed in 1999 and a second woman judge and a woman Advocate-General were appointed in 2000.

⁷ See generally Charlesworth and Chinkin, *Boundaries*, note 4, at 308-12. And for the role of NGOs, see H. Durham, 'Woman and Civil Society: NGOs and International Criminal Law', in K. Askin and D. Koenig (eds), *Women and International Human Rights* (1999-2000) Vol. 3, 819 and R. Copeland, 'Gender Crimes as War Crimes, Integrating Crimes Against Women into International Criminal Law', 46 *McGill Law Journal* (2000) 217.

⁸ The original indictment did not include any allegations relating to sexual violence against women, but Judge Pillay persisted in questioning female witnesses about this and ultimately the indictment was amended: see Charlesworth and Chinkin, *Boundaries*, note 4, at 312; and Copeland, note 6, at 225-6 (also arguing that the amicus brief filed by women's NGOs was influential).

⁹ See C. Steains, 'Gender Issues in the International Criminal Court' in R. Lee (ed.) *The International Criminal Court* (1999) 357 at 377-8 for the influence of Judge Pillay's example in the negotiation of the International Criminal Court Statute.

¹⁰ Durham, note 6, at 827. Women's NGOs had played a similar role in pushing for the inclusion of gender provisions for the African Court of Human Rights. In both cases, states preferred language that fell short of an explicit requirement for equality, settling on "adequate gender representation" for the African Court and "fair representation" for the ICC: see respectively N. Udombana, 'Toward the African Court of Human and Peoples' Rights: Better Late Than Never', 3 *Yale Human Rights and Development Law Journal* (2000) 45, 84 and Steains, note 8, 377-9.

begun to promote women's participation in conflict prevention, peace-keeping and post-conflict reconciliation and justice.¹¹

Notwithstanding the above, there has not been a dramatic increase in nominations of female candidates for the permanent positions on two Criminal Tribunals. This became an issue early 2001 when only one female candidate was nominated for the ICTY.¹² As it turned out, Judge Mumba, a sitting judge, was only re-elected by the narrowest of margins. Some observers attributed this to the failure of her home state to run a campaign and the prevalence of cross-election trading of votes. The need for more nominations of female candidates had already been identified when the Security Council amended the statute of the ICTY in late 2000 to create a pool of *ad litem* judges.¹³ However, it seems likely that it was the publicity surrounding the ICTY election that prompted increased efforts within the UN to encourage states to nominate female judges. The number of women candidates for first elections for the *ad litem* judges for the ICTY was encouraging, but not necessarily a good indicator for future elections.¹⁴ It is also not clear that this is indicative of a changed approach on the part of states that will carry over to the more highly sought after permanent positions.

While increased participation of women in all international institutions is part of the Beijing process, little attention seems to have been given to how to promote women's participation on international courts and tribunals generally.¹⁵ Neither the UN nor any of the institutions in the survey keep statistics about women's candidacies. There has also been no systematic attempt to analyze the causes for the low rates of nomination and election of women candidates.

Causes of low participation rates

While there are studies that suggest that women lawyers continue to experience slower rates of career progress than their male counterparts in national systems,¹⁶ it is not credible to suggest that the problem at the international level is solely attributable to the lack of a "pool"

¹¹ E.g., General Assembly, Political Declaration and "Further actions and initiatives to implement the Beijing Declaration and platform for action," UN Doc S-23/2, annex and S/23/3, annex, 10 June 2000 at paras. 23, 46, 86 (b)-(c); Report of the Secretary - General on Implementation of the Outcome of the Fourth World Conference on Women and of the special assembly of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century," UN Doc A/55/341, 30 August 2000, at paras 20, 46, 48, 72 (f). See also the Security Council Resolution on peace processes and conflict resolution, UN Doc S/Res/1325 (2000), 31 October 2000.

¹² A second female candidate from the Philippines withdrew. See Women's Caucus for Gender Justice, 'UN General Assembly to Elect ICTY Judges on Wednesday, Only 1 Woman on List of 26 Nominees, NGO's, Women's Groups Outraged at Appalling Lack of Representation'; Press Release 13 March 2001; Coalition for an International Criminal Court, 'Disappointment Over Lack of Women Nominees To the Yugoslav Tribunal', Press Release 14 March 2001.

¹³ Article 13ter (1)(b) requires states to take into account the importance of fair representation of female and male candidates in making nominations of up to 4 candidates for the new *ad litem* judges for the ICTY, but note the Security Council did not extend the requirement to permanent appointments for the 2 tribunals. A similar provision is now included in the Statute for the ICTR: Article 12 ter (1) (b) in the Annex to UN Doc S/Res/1431 (2002) dated 14 August 2002.

¹⁴ There were 14 women out of 64 candidates for 27 positions and 8 women were elected.

¹⁵ See generally Report of the Fourth World Conference on Women, Beijing, 4-5 September 1995, Declaration and Platform for Action, UN Doc A/CONF 177/20, paras 13, 36, 79, 190; General Assembly, Follow-up to the Fourth World Conference on Women and full implementation of the Beijing Declaration and Platform for Action, UN Doc A/RES/51/69, 12 December 1996, para 27 (promoting women candidates); and the General Assembly resolution for the special session and the Secretary-General's Report referred to in note 10, and note also para 74 (e) of the Report.

¹⁶ E.g., for the US, see ABA Commission on Women in the Profession, *Unfinished Business: Overcoming the Sisyphus Factor* (1995), *Elusive Equality: The Experience of Women in Legal Education* (1996); for the EU, see M. Anasagasti and N. Wuiame, *Women and Decision-Making in the Judiciary in the European Union* (1999).

of suitably qualified candidates. For example, the US, which has one of the highest levels of participation by women judges at the state and federal levels, did not nominate a woman candidate in the last election for the permanent judges on the ICTY, despite the fact that its 2 previous nominees had been women. It is unclear whether any efforts were made to find a woman candidate.¹⁷ Similarly, Europeans, both EU members and central and eastern Europeans, which have high percentages of senior women lawyers, judges and academics seldom put forward women candidates, except for human rights and women's rights bodies.

More likely causes of the low nomination rates are the lack of priority states attach to the issue, persistent ideas about candidates that work against women and systemic barriers or disincentives for women. It is apparent that many states persist in promoting a particular type of candidate - one with a background in academia, diplomacy and the ILC - to which women are less likely to conform. It seems likely also that some states persist in seeing women as "naturally suitable" candidates only for women's rights and human rights bodies. It is also possible that a certain number of potential women candidates do not put their names forward because of the failure of most international institutions to accommodate women's different family responsibilities- something that could in part be addressed by different leave and working arrangements.

Recommendations

This paper is intended to provide a basis for consideration of strategies for improving women's participation rates on international court's and tribunals. It is not necessary to assume that a male judge can not "represent" women's interests on such bodies or that a woman judge would necessarily represent or advance women's interests or even that all women have the same interests.¹⁸ However, international courts and tribunals should not be seen as outside the general movement towards equal participation of women in national and international institutions.

It seems likely that many states would resist any attempt to amend existing rules on appointment and election to international courts and tribunals to make explicit provision in relation to representation of women, for example based on the model of the International Criminal Court. However, nothing in such rules precludes the development of conventions or practices concerning gender representation.¹⁹ There is also clearly scope within the existing

¹⁷ The US changed candidates following the change of administration. The 2 Clinton Administrations named the highest number of women and minorities to the federal judiciary in US history (close to 50% of all nominations: women 31%), see C. Tobias, 'Judicial selection at the Clinton Administration's end', 19 *Law and Inequality* (2001) 159 at 181.

¹⁸ See the bibliography for arguments for women's participation and studies of judges. See particularly K. Knop, 'Re/Statements: feminism and state sovereignty in international law', 3 *Transnational Law & Contemporary Problems*, (1993) 293 at 303-7 (Knop discusses 3 feminist approaches - equality, "different voice" and collective autonomy). The different voice argument is based on the work of Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (1982, 1998). The idea of a distinctive "feminine voice" remains controversial: see Charlesworth and Chinkin, *Boundaries*, note 4, at 40-48. There have been a number of studies of women judges at the national level. For recent surveys of US literature see E. Martin and B. Pyle, 'Gender, race and partisanship on the Michigan Supreme Court', 63 *Albany Law Review* (2000) 1205 at 1219-1221; C. Bowman, 'Bibliographical Essay: Women and the legal profession', 7 *American University Journal of Gender and Social Policy and Law* (1999) 149 at 173-4 and D. O'Sullivan, 'Gender and judicial appointment', 3 *University of Queensland Law Journal* (1996) 107.

¹⁹ See e.g., the convention or practice of including judges with the nationality of the 5 permanent members of the Security Council on the International Court of Justice. Note that Charlesworth and Chinkin have argued that the failure to elect more women to the ICJ "suggests a limited understanding of the stipulation in its statute that 'in the [Court] as a whole the representation of the main forms of civilization should be assured'", *Boundaries*, note 4, at 81.

nomination and election processes for efforts by individual states and regional groups to “promote” women. However, there is unlikely to be much change until states move beyond exhortations to practical steps. The International Criminal Court is an instance where states have accepted an obligation to achieve a fair balance and it will be important to ensure that this is not diluted by the development of inadequate rules nor undermined by any effort to characterize the obligation as hortatory, progressive or solely a matter of concern for the states parties. Given the suggestion above that it is not credible to argue the absence of a qualified pool of female candidates is the sole problem, states parties should be encouraged to look at other potential obstacles, such as their approach to finding suitable candidates, adequacy of national procedures and their use of cross-election vote trading. Similar considerations apply to ICTY and ICTR where the importance of gender crimes in their work is clearly recognized. However, it is also necessary to focus more broadly on dealing with the fact that women are not represented, or not adequately represented, on most of the important international law-making bodies.

In the first instance, attention needs to be given at the national government level to identifying women candidates and making election of women a political and diplomatic priority. It would also be useful to encourage sympathetic diplomatic representatives in New York and Geneva to look at management of campaigns and cross-election voting arrangements. International and national professional associations of judges and lawyers, such as the International Association of Women Judges, also play a useful role in identifying and encouraging potential female candidates. The issue could also be explicitly included as a priority in the work of the UN Special Adviser on Gender Issues and Advancement of Women. (The Special Adviser currently urges states to find women candidates and has helped identify women candidates in certain cases for the Secretary-General.)

Women’s NGOs are vital in this kind of initiative and already have established networks at the national and international level that could be called on to promote women candidates and are active in lobbying states about the two international criminal tribunals and the International Criminal Court. In the context of the ICC, human rights NGOs, such as the International Coalition for an International Criminal Court and its members have also identified election of women judges as an important issue and the involvement of a broad base of NGOs should be helpful in putting pressure on states.

As indicated above, in the immediate future, attention is likely to continue to focus on the three international criminal bodies. It is clear that many states do not see increased participation by women on these bodies as a priority. In view of this, the importance of nominating more women candidates needs to be reinforced well before the next round of elections for the Tribunals. In the case of the International Criminal Court, those states that have identified themselves as strong supporters of the court should be encouraged to ensure that the requirement of “fair representation” of women on the Court translates into balanced representation by nominating and voting for women candidates.

PICT could play a role in highlighting the importance of the issue and could consider follow-up studies such as:

1. Compilation of detailed data on elections and candidatures for international courts and tribunals.²⁰
2. Case studies on elections for select bodies, such as the ICJ and ITLOS, as well as the ICTY, ICTR and ICC.

²⁰ The relevant institutions should also be encouraged to keep such data.

3. A comparative survey of representative national processes for the selection and nomination of candidates. This could be done for particular elections or bodies or different kinds of processes (e.g., the role of national groups).

4. Continuing to provide a forum for discussion of this issue, for example by hosting further meetings like the London meeting in July 2001 and the upcoming meeting in New York on 9 September 2002, including possibly in the Asia-Pacific Region or Africa.

Part 2: Women as Advocates before International Courts and Tribunals

The Survey

A survey was done of the reported cases for the International Court of Justice (1991-2000), the International Tribunal for the Law of the Sea (1997-2001), Inter-American Court of Human Rights (1979-2000)²¹ and the European Court of Human Rights (1997-2000).²² Information was also sought from the International Centre for the Settlement of Investment Disputes, World Trade Organization, the World Bank, International Criminal Tribunal for former Yugoslavia and International Criminal Tribunal for Rwanda about women's participation as advocates.

The survey of women advocates was necessarily partial for the purposes of this preliminary effort because of the large number of cases involved. No court or tribunal in the survey collects information about participation of advocates or keeps statistics by gender. In at least one case, the reports do not always indicate the gender of advocates (the recent reports of the European Court of Justice). In looking at reported cases, an effort was made to distinguish between government officials and independent counsel and identify lead or speaking counsel and co-counsel (the latter proved more difficult).

It is difficult to generalize about participation across such a range of bodies. However, it appears that the proportion of women advocates, whilst still limited, is increasing. Women who appear before courts and tribunals usually do so as co-counsel rather than lead counsel. Women participants are also more likely to come from a government background than the private bar. However, this last observation needs to be qualified. In bodies such as the International Court of Justice, the small number of "senior" women counsel who have appeared before the Court have been drawn from the private profession or academia.

In the case of the survey of International Court of Justice cases, the reports show 55 women appearing as counsel, advisers or solicitors.²³ Of these, only 6 appear to have made oral submissions to the Court.²⁴ Only 2 women appear in the reports of the 8 cases before the Law of the Sea Tribunal. For the Inter-American Court of Human Rights, the reports of 46 cases show 65 women appearing in some capacity.²⁵ For the European Court of Human Rights, the reports of 702 cases show 500 women out of 2071 agents, counsel and delegates. There were 97 women out of 778 "counsel."

Anecdotal evidence for ICSID suggests that women are increasingly appearing as counsel.²⁶

²¹ Carol Pollack, JSD 2001, New York University School of Law, conducted the research based on cases available on line.

²² Sabine Semmelroth at London University conducted the research based on a survey of cases online from 1/1/97 to 1/12/2000.

²³ There were 42 women in contentious cases and 13 women in advisory opinions cases. In this period the ICJ heard some 30 cases involving something in the order of 4-8 counsel, advisers and solicitors for each party, including multiple parties in advisory opinions cases.

²⁴ The figures are not exact, only examination of the transcripts for each case could confirm the roles taken.

²⁵ There were 12 women in contentious cases and 53 in advisory opinions cases. It was not possible to determine how many made oral submissions. The women shown appeared mostly for the Inter-American Commission.

²⁶ The reports do not always disclose counsel etc. Margarete Stevens of ICSID believes that women are or have

In the case of the WTO, where parties usually use government officials to argue cases, women have presented cases and are sometimes retained as private counsel by Members.²⁷ The Prosecutor for the two international Tribunals is a woman. Women attorneys in the Office of the Prosecutor routinely appear before the Tribunals. However, most attorneys are still male.

Recommendation

Any effort to analyze women's participation as international advocates would need to track closely women's participation at the national level as private counsel, prosecutors and legal advisers in relevant ministries. It would also need to attempt to survey "client" attitudes affecting choice of advocates. It may be that this sort of study is best undertaken with bodies such as the women's section of the International Bar Association or the American Bar Association Commission on Women in the Profession. It is possible that the women's sections of the International Law Association or local international law associations, such as the American Society of International Law, would be interested in the issue. (The American bodies are mentioned because they have the resources, as well as experience in conducting large-scale research projects). Certainly, PICT could play a role in highlighting the low participation rates of women advocates and generating interest in conducting research in this area.

been involved in about half of current or recent cases, at least for one of the parties. This is true for parties from both developed and developing countries: email on file with PICT.

²⁷ WTO reports do not show the details of delegations' composition. Members may retain private legal counsel and there is some evidence that this is happening more frequently, but it still remains unusual.

TABLE A

NAME OF BODY	NO. OF WOMEN MEMBERS	RULES RE WOMEN JUDGES	RULES RE NOMINATION OF WOMEN	RULES RE WOMEN COURT STAFF	EQUITABLE GEOGRAPHIC REPRESENTATION	PRINCIPAL LEGAL SYSTEMS	ELIGIBILITY FOR NATIONAL JUDICIAL OFFICE OR JURISCONSULT ²⁸	RELEVANT EXPERIENCE/COMPETENCE REQUIRED	APPOINTMENT METHOD
ICJ	1/15				X (By convention)	X	X (Either judicial office or jurisconsult)		National Group nomination & election by states ²⁹
ITLOS	0/21				X (By rules)	X		X	State nomination & election
WTO	0/7 ³⁰				X (By rules)			X	State nomination & committee selection
ICSID	31								States designate to a List & parties can use List or not
ECJ (incl. Court First Instance)	3/23, 2/15				X (Each member state)		X (Either judicial office or jurisconsult)		State nomination & appointment by "common accord"
IACHR	0/7						X	X	State nomination & election
ECHR	10/41	X (Court positions)		X	X (Each state party)		X (Either judicial office or jurisconsult)		State nomination & limited election
AFCHR	Does not exist yet	X	X		X (By rules)	X		X	State nomination & election
ICTY (incl. ad litem)	1/16, 5/9 ³²		X (Ad litem only)		X (By rules)	X	X	X	State nomination & election
ICTR	3/16		X (Ad litem only)		X (By rules)	X	X	X	State nomination & election
ICC	Does not exist yet	X		X	X (by Rules)	X	X	X	State nomination & election
WBIP	1/3							X	State nomination & appointment process

²⁸ Usually a senior legal academic.

²⁹ Nomination is by "national groups." National groups to select a candidate are also an option for the ICC, with the nomination being formally made by the state party.

³⁰ Appellate Body. Also since the WTO entered into force and mid-2001 there had been 67 panel cases, each usually involving 3 panel members. By mid-2001 there had only been 20 female panel members and 2 female chairs.

³¹ This is not a standing body. By mid-2001, there had been around 78 cases involving 236 arbitrators, of whom 7 were women, with 1 woman President.

³² The figures refer respectively to the 16 permanent judges and the pool of ad litem judges. Out of the pool of 27 ad litem judges, 9 at any one time can be appointed to the Trial Chambers of the Tribunal. 5 women have been appointed.

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**ANNEX: BACKGROUND ON WOMEN AND INTERNATIONAL
LITIGATION
(including rules on selection and nomination)**

INTERNATIONAL COURT OF JUSTICE

The principal judicial organ of the United Nations was established in 1946 (replacing the Permanent Court of International Justice 1922-1946).³³ It has contentious jurisdiction (over legal disputes between states) and advisory jurisdiction (at the request of the General Assembly, Security Council and authorised UN bodies and specialized agencies).³⁴

Judges: 15 judges elected for 9 year terms with the possibility of re-election.³⁵ Judges *ad hoc* may be appointed in a case where a party does not have a judge of its own nationality (parties can appoint a judge with a different nationality).³⁶

Women Judges: 1 (Dame Rosalyn Higgins, UK, 1995, re-elected 1999). *Ad Hoc Judges:* 1 (Mme. Suzanne Bastid, Fr.³⁷). Rosalyn Higgins was the only female candidate in any ICJ election.

Qualifications: Judges must be of high moral character and possess the qualifications required in their respective countries for appointment to the highest judicial offices or be jurisconsults of recognized competence in international law.³⁸ There is no nationality requirement, but no 2 judges may have the same nationality. The ICJ Statute provides that in the Court “as a whole representation of the main forms of civilization and of the principal legal systems of the world should be assured.”³⁹ By convention or practice, the appointments are based on geographic distribution in the Security Council.⁴⁰ It follows that five judges have the nationality of the 5 permanent members of the Security Council. Ad hoc judges are expected to meet the basic qualifications and should be “chosen preferably from among those persons who have been nominated as candidates” for the ICJ.⁴¹ This last point is often not observed.⁴²

Method of selection: Candidates are nominated by national groups in the Permanent Court of Arbitration (PCA) or by national groups of non- PCA members. In the PCA these groups comprise state-nominated potential arbitrators (up to 4 persons) who must be of “known competence in international law”. Non-PCA members of the UN create similar groups. National groups in the PCA typically comprise foreign office legal advisers, academics and ICJ and national judges. National groups may put forward 4 nominations (only 2 of whom may be their own nationals). Under the ICJ Statute “each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and

³³ Charter of the United Nations, 26 June 1945, XV UNCIO 335; Statute of the International Court of Justice, 26 June 1945, Annex to UN Charter. The Members of the UN and Switzerland are parties. Scope also exists for other states to use the Court: ICJ Statute, Article 35 (2). See generally, P. Sands, R. Mackenzie and Y. Shany, *Manual on International Courts and Tribunals* (1999) (“*Manual*”), Chapter 1.

³⁴ Contentious jurisdiction is consensual arising out of special agreement or unilateral application (Article 36(1)); as provided for in the Charter, treaties or conventions (Article 36 (1)) or acceptance by declaration under the optional clause of the compulsory jurisdiction of the ICJ (Article 36 (2)). For advisory jurisdiction, see particularly Articles 65 and 96 of the Statute and Article 96 of the UN Charter.

³⁵ ICJ Statute, Articles 3(1), 4 (1) and 13(1).

³⁶ ICJ Statute, Article 31(2) and (3).

³⁷ Application for Revision and Interpretation of the Judgment of 24 February 1982 in the Case Concerning the Continental Shelf (Tunisia v. Libyan Arab Jamahiriya) 1985 ICJ Rep. 192.

³⁸ ICJ Statute, Article 2.

³⁹ ICJ Statute, Article 9.

⁴⁰ 3 seats for Asia (incl. China), 3 for Africa, 2 for Eastern Europe (incl. Russia), 2 for Latin and Caribbean states and 5 Western and Others (incl. Fr, UK, US). The system of dual elections and the “minimum of understanding” between the Security Council and the General Assembly ensure the seats of the permanent 5: S. Rosenne, *The Law and Practice of the International Court, 1920-1996* (3rd ed. 1997) Vol. 1, at 394-5.

⁴¹ Articles 31(2) and 31(6). The basic qualifications are in Articles 2, 17(2), 20 and 24.

⁴² Judges Ad hoc have included former ICJ judges, arbitrators, specialists in a particular field, e.g. maritime delimitation, and former national judges of the appointing state.

national sections of international academies devoted to the study of law.”⁴³ The process of nomination involves “unofficial consultation amongst the various national groups and different governments.”⁴⁴

The General Assembly and the Security Council conduct separate, concurrent elections, with an absolute majority for election in both bodies being required. Special provision is made for a joint meeting of the General Assembly and the Security Council in the case where there are 1 or more appointments unfilled after 3 meetings and for election by the judges of the ICJ if there is no resolution at the political level.⁴⁵ Neither procedure has been used.

The current PCA national groups comprise 291 members, of whom 24 are women.⁴⁶

Next election: Every 3 years for 5 members. Next election is in 2002.

Background of Judges: The following description appears in a publication issued by the Court:

“Of the 82 Members of the Court elected between February 1946 and July 1996, 23 had held judicial office, 8 of them having served as chief justice of the supreme court of their respective countries; 36 had been barristers and 59 professors of law; 54 had occupied senior administrative positions, such as legal adviser to the ministry of foreign affairs (24); and 20 had held cabinet rank, 2 even having been head of State. Almost all had played an important international role, having been, for instance, members of the Permanent Court of Arbitration (33) or of the United Nations International Law Commission (29), delegates (45) to or presidents (2) of the General Assembly of the United Nations, representatives on the United Nations Security Council, participants in major international conferences of plenipotentiaries, etc. Some had already played a part in cases before the PCIJ or the ICJ (27). Their average age at the time of their first election to the Court was 60 (7 were in their seventies, 41 in their sixties, 31 in their fifties and 3 in their forties). The average age of judges during their term of office has stabilized at about 64.”⁴⁷

The appointments since July 1996 (P. Kooijmans, 1997; F. Rezek, 1997; A. Shawat Al-Khasawneh, 2000; and T. Buergenthal, March 2000) have all had diverse experience, combining academic, diplomatic and international organizations positions. Using the above breakdown, they were national judges (1), regional judges (1), foreign ministers (2), members of the Permanent Court of Arbitration (2), on the International Law Commission (1), or members or heads of UN bodies (2), international law professors (4), senior government representatives at international conferences (4). The biographies provided by the Court do not disclose whether any of the 4 had appeared as counsel before the ICJ. At the time of their appointments, 2 were in their early 50s and 2 were in their mid 60’s.⁴⁸ Of the current judges, 4, including Judge Higgins, appeared as counsel before the Court prior to their appointments.

⁴³ Article 6.

⁴⁴ Rosenne, note 42, at 378.

⁴⁵ Article 12.

⁴⁶ As of 6 March 2001: see document on file with PICT and Permanent Court of Arbitration website

<http://www.pca-cpa.org/>

⁴⁷ *A Guide to History, Composition, Jurisdiction, Procedure and Decisions of the International Court of Justice (1946-1996)* (based on a booklet prepared for the fiftieth anniversary of the inaugural sitting (1946-1996)):

<http://www.icj-cij.org/>. Note that the survey may be somewhat questionable: membership of the Permanent Court of Arbitration is at the nominating state’s discretion and hardly guarantees that the member has played an “important international role.”

⁴⁸ For criticism of the “types” of judges at different times in the ICJ’s history, see G. Abi-Saab, ‘Ensuring the best bench: ways of selecting judges’ in R. Lee & C. Peck (eds), *Increasing the Effectiveness of the International Court of Justice* (1997) 165 at 179 (also citing criticisms in G. Fitzmaurice, ‘The Future of Public International Law of the International Legal System in the Circumstances of Today’ in Institut de Droit International, *Livre du*

Relevant Rules

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions.

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

Centenaire, 1973, para 89 at 288 and S. Rosenne, 'The Composition of the Court' in L. Gross (ed), *The Future of the International Court of Justice* (1976) Vol I at 390).

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfills the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfill the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA (ITLOS)

ITLOS was established under the 1982 UN Convention on the Law of the Sea (UNCLOS) and became operational in 1996.⁴⁹ ITLOS has jurisdiction where the parties have selected it as the forum for compulsory dispute resolution under UNCLOS. It has compulsory jurisdiction in certain circumstances with respect to the “prompt release” of detained vessels and crews or where a party requests provisional measures in the event of a failure to agree on an alternative court or tribunal within 2 weeks. The Tribunal may also derive jurisdiction from another agreement that has a related purpose. The Seabed Disputes Chamber has compulsory jurisdiction in respect of disputes relating to deep sea-bed area under Part XI of UNCLOS. Advisory jurisdiction exists in limited cases. ITLOS is open to parties to UNCLOS and in certain situations to non-state parties, international organizations, private persons and corporations.

Current Judges: 21. No women. In 2 elections, only one woman has been proposed as a candidate. Appointments are for 9 years, with special provision for initial appointments (7 of first 21 retired after 3 years, 7 will retire after 6 years, and 7 will serve for the full 9 years).⁵⁰ Seven new male judges were elected in 2002.

Qualifications: Appropriate reputation and recognized competence in the law of the sea. ITLOS must be representative of the principal legal systems of the world and membership must be based on equitable geographical representation.⁵¹ No 2 nationals may be from the same state and it must have at least 3 members from each UN geographical group.⁵²

Method of Selection: By the states parties to UNCLOS. Parties nominate up to 2 candidates and election is by a special majority (majority of votes, 2/3rds of states parties present and voting, provided this is a majority of states parties.)⁵³

Relevant Rules

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Article 2

Composition

1. The Tribunal shall be composed of a body of 21 independent members, elected from among persons enjoying the highest reputation for fairness and integrity and of recognised competence in the field of the law of the sea.

2. In the Tribunal as a whole the representation of the principal legal systems of the world and equitable geographical distribution shall be assured.

Article 3

Membership

1. No two members of the Tribunal may be nationals of the same State. A person who for the purposes of membership in the Tribunal could be regarded as a national of more than one State shall be deemed to be a national of the one in which he ordinarily exercises civil and political

⁴⁹ 10 December 1982, 21 ILM 1261 (1982), entered into force on 16 November 1994. ITLOS Statute (Annex VI of UNCLOS). See *Manual*, note 34, Chapter 3.

⁵⁰ ITLOS Statute, Articles 4(4) and 5(1). The terms were determined by lot at the first election, subject to a requirement of fixed geographical distribution: SPLOS/L.3/rev. 1, 31 July 1996, para 11. Report of the Fifth Meeting of States Parties, SPLOS/14, 20 September 1996.

⁵¹ ITLOS Statute, Article 2 (1), (2).

⁵² ITLOS Statute, Article 3 (1), (2). The division is as follows: 5 African Group; 5 Asian Group; 3 Eastern European Group, 4 Latin American and Caribbean Group, 4 Western Europe and Other Group: First Election of Members of the International Tribunal for the Law of the Sea, SPLOS/L.3/rev. 1, 31 July 1996, para 2(a).

⁵³ ITLOS Statute, Article 4(4).

rights.

2. There shall be no fewer than three members from each geographical group as established by the General Assembly of the United Nations.

Article 4

Nominations and elections

1. Each State Party may nominate not more than two persons having the qualifications prescribed in article 2 of this Annex. The members of the Tribunal shall be elected from the list of persons thus nominated.

2. At least three months before the date of the election, the Secretary-General of the United Nations in the case of the first election and the Registrar of the Tribunal in the case of subsequent elections shall address a written invitation to the States Parties to submit their nominations for members of the Tribunal within two months. He shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties before the seventh day of the last month before the date of each election.

3. The first election shall be held within six months of the date of entry into force of this Convention.

4. The members of the Tribunal shall be elected by secret ballot. Elections shall be held at a meeting of the States Parties convened by the Secretary-General of the United Nations in the case of the first election and by a procedure agreed to by the States Parties in the case of subsequent elections. Two thirds of the States Parties shall constitute a quorum at that meeting. The persons elected to the Tribunal shall be those nominees who obtain the largest number of votes and a two-thirds majority of the States Parties present and voting, provided that such majority includes a majority of the States Parties.

WORLD TRADE ORGANIZATION (WTO) DISPUTE SETTLEMENT BODY

The Dispute Settlement Understanding (DSU), which forms part of the 1994 Agreement establishing the World Trade Organization, sets out the dispute settlement mechanism for the WTO.⁵⁴ The Dispute Settlement Body (DSB), a political body comprised of WTO Member representatives, administers the system.⁵⁵ Ad hoc panels of experts may be established by the DSB following a request by a party to a dispute to report on the merits and make recommendations to the DSB.⁵⁶ There is an automatic right of appeal on legal grounds to the permanent Appellate Body (AB).⁵⁷ Arbitrators or panels of arbitrators may also be created in certain situations.⁵⁸

Membership: The Appellate Body comprises 7 members who serve for 4 year terms with the possibility of one renewal.⁵⁹ No women have served on the AB. There have been 20 women members of panels and 2 women chairs.⁶⁰

Qualifications: Appellate Body Members must “have recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally.” They must be unaffiliated with any government. The Appellate Body membership must be broadly representative of membership in the WTO.

A Panel member must have some trade background, either as a panel member under the WTO or GATT, a representative in the organs of the WTO, GATT or covered trade Agreements, a senior trade official of a WTO Member, an officer in the Secretariat, or as a teacher or writer on trade.

Method of selection: Members of the Appellate Body are appointed by the DSB. A joint proposal is put to the DSB by a selection committee comprising the Director-General of the WTO, the Chair of the DSB, the chairs of the General, Goods, Services and TRIPS councils (the so-called Committee of 6). Member states suggest candidates to the Director-General. The selection process involves close consultation with Members and “balanced representation” has been very important.⁶¹

Panels normally comprise 3 members, but the parties may request up to 5 persons. The WTO Secretariat proposes names, usually drawn from a roster of potential panelists - the Indicative List - that the parties are expected to accept unless there are compelling reasons.⁶² For the Indicative List of Panelists, Members make nominations for approval to the DSB, following which the Secretariat adds them to the Indicative List.⁶³ There are 147 names on the list. 18 are women.

⁵⁴ Agreement Establishing the World Trade Organization, 15 April 1994, 33ILM 1236 (1994). Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes. The Agreements covered by the DSU appear in Appendix 1 and special or additional rules and procedures appear in Appendix 2. The WTO web site is at <http://www.wto.org>. See *Manual*, note 34, Chapter 5.

⁵⁵ DSU, Article 2. Note also Article 16 on adoption of panel reports and 17 (14) on the adoption of decisions of the Appellate Body. The DSB also supervises implementation: Article 21.

⁵⁶ DSU, Articles 11, 12-15.

⁵⁷ DSU, Articles 17-18; Working Procedures for Appellate Review, as amended, 28 February 1997, WT/AB/WP/3.

⁵⁸ Where the parties agree (Article 25, DSU or, for example, where there is a dispute about the level of suspension of concessions: Article 22 (6) and (7)) or under other Agreements, such as Article 8.5 of the Agreement on Subsidies and Countervailing Measures, Procedure adopted on 2 June 1998.

⁵⁹ There have been 10 members since 1995.

⁶⁰ List on file with PICT.

⁶¹ The procedures are in Article 17(3) and DSB decision of 10 February 1995, WT/DSB/1.

⁶² However, most panel members do not come from the list.

⁶³ WT/DSB/19 dated 29 March 2000. A further woman nominee was added this year.

Next Election: 3 members retired on 10 December 2001 and the Selection Committee considered 12 candidates and appointed 3 male members.⁶⁴ There seems to have been at least one women candidate.

Relevant Rules

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Article 8

Composition of Panels

(1) Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.

(2) Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.

(3) Citizens of Members whose governments⁶⁵ are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.

(4) To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.

...

(8) Members shall undertake, as a general rule, to permit their officials to serve as panelists.

(9) Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

(10) When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

⁶⁴ Appointed on 25 September 2001. Minutes of the DSB (WT/DSB/M/ 110) and Annual Report (WT/DSB/26).

⁶⁵ In the case where customs unions or common markets are parties to a dispute, this provision applies to citizens of all member countries of the customs unions or common markets.

Article 17

Appellate Review

Standing Appellate Body

(1) A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

(2) The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

(3) The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

Establishment of the Appellate Body, Recommendations by the Preparatory Committee for the WTO approved by the Dispute Settlement Body on 10 February 1995 (WT/DSB/1)

1. Expertise of persons serving on the Appellate Body

5. The DSU provides that the Appellate Body “shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally.” The expertise should be of a type that allows Appellate Body members to resolve “issues of law covered in the panel report and legal interpretations developed by the panel.

2. Representative balance

6. While the overriding concern is to provide highly-qualified members for the Appellate Body, the DSU also requires that the Appellate Body membership be “broadly representative” of the membership in the WTO. Therefore factors such as different geographical areas, levels of development, and legal systems shall be duly taken into account. The question of how this balance is to be achieved is best left to be worked out during the actual consultation and selection procedures.

3. Impartiality and confidentiality

7. The DSU provides that members of the Appellate Body “shall not be affiliated with any government.” Members of the Appellate Body should not therefore have any attachment to a government that would compromise their independence of judgment. This requirement would not necessarily rule out persons who, although paid by a government, serve in a function rigorously and demonstrably independent from that government.

INTERNATIONAL CENTRE FOR THE SETTLEMENT OF INVESTMENT DISPUTES (ICSID)

ICSID provides facilities for conciliation and arbitration of investment disputes between states and nationals of other states. Established in 1966 by the Washington Convention and part of the World Bank Group.⁶⁶ Since 1978, it has been available for disputes that fall outside the scope of the Convention.⁶⁷ ICSID has a roster of arbitrators and conciliators, designated by state parties and the Chairman of its Administrative Council.⁶⁸ The list is not exhaustive. Generally, arbitral panels comprise 3 members, 1 each chosen by the parties and the 3rd and presiding member chosen by agreement or, in default of agreement, by the Chairman of the Administrative Council. Conciliation commissions may comprise 1 or an uneven number of members and are similarly constituted. There is scope for a further *ad hoc* panel to review awards in limited circumstances.

Arbitrators/Conciliators: Designations are for renewable 6 year terms. As of March 2001, there were 552 (state nominated) conciliators, arbitrators or joint designations. Women accounted for 10 arbitrators; 13 conciliators; 6 conciliator/arbitrators. Of the 10 designations made by the Chairman of the Administrative Council, 1 is a woman. There have been 7 women arbitrators appointed.

Selection/Election Process: States can designate up to 4 names and the Chairman of it's the Administrative Council can designate up to 10 names. States are not limited to their own nationals.

Relevant Rules

CONVENTION ON THE SETTLEMENT OF INVESTMENT DISPUTES BETWEEN STATES AND NATIONALS OF OTHER STATES

Article 12

The Panel of Conciliators and the Panel of Arbitrators shall each consist of qualified persons, designated as hereinafter provided, who are willing to serve thereon.

Article 13

(1) Each Contracting State may designate to each Panel four persons who may but need not be its nationals.

(2) The Chairman may designate ten persons to each Panel. The persons so designated to a Panel shall each have a different nationality.

Article 14

(1) Persons designated to serve on the Panels shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment. Competence in the field of law shall be of particular importance in the case of persons on the Panel of Arbitrators.

(2) The Chairman, in designating persons to serve on the Panels, shall in addition pay due regard to the importance of assuring representation on the Panels of the principal legal systems of the world and of the main forms of economic activity.

Article 39

⁶⁶ Convention for the Settlement of Investment Disputes Between States and Nationals of Other States, 18 March 1965, 575 UNTS 159. See also ICSID rules on the institution of disputes, arbitration procedure and conciliation procedure in ICSID Basic Documents. See also *Manual*, note 34, Chapter 6.

⁶⁷ Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for the Settlement of Investment Disputes.

⁶⁸ Members of the Panels of Conciliators and Arbitrators (March 2001) <http://www.worldbank.org/icsid/pubs/icsid-10.htm>

The majority of the arbitrators shall be nationals of States other than the Contracting State party to the dispute and the Contracting State whose national is a party to the dispute; provided, however, that the foregoing provisions of this Article shall not apply if the sole arbitrator or each individual member of the Tribunal has been appointed by agreement of the parties.

Article 40

(1) Arbitrators may be appointed from outside the Panel of Arbitrators, except in the case of appointments by the Chairman pursuant to Article 38.

(2) Arbitrators appointed from outside the Panel of Arbitrators shall possess the qualities stated in paragraph (1) of Article 14.

COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

The Court of Justice of the European Communities (ECJ), created in 1952, is the principal judicial organ of the European Communities (the European Community (EC), the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom)).⁶⁹ Its primary function is to ensure the uniform interpretation and application of EC law by member states and institutions, including national courts. Since 1989 a Court of First Instance (CFI) has worked under the ECJ.

Judges: 15 judges nominated by the 15 member states of the EU who are appointed by “common accord” for 6 year terms that can be renewed. There are also eight Advocates-General who are appointed on the same basis. The CFI has 15 judges appointed by the 15 member states for 6 year terms that can be renewed.⁷⁰

Participation of women: Judges: 2, Fidelma O’Kelly Macken (Ir) (first female appointee from October 1999), Ninon Colneric (Ger) (from 15 July 2000); Advocates-General: 1, Christine Stix-Hackl (Aus) (from October 2000). The first female Advocate-General was Madame Rozes (Fr) who served from March 1981 for 3 years. Judges on the CFI: 2, Virpi Tiili (Fin) Pernilla Lindh (Swe) (both since January 1995).

Qualifications: Judges and Advocates-General must be independent persons who possess the qualifications required for appointment to the highest judicial offices in their respective countries or who are jurisconsults of recognised competence. Judges of the CFI must be independent and possess the ability required for appointment to judicial office.

Selection Process: Each Member State nominates a judge, with the formal appointment by “common accord” in the Council of Ministers. Kenny has analyzed the appointments made by different states from 1952-1995.⁷¹

Relevant Rules

CONSOLIDATED VERSION OF THE TREATY ESTABLISHING THE EUROPEAN COMMUNITY (1957)

Article 221 (ex Article 165)

The Court of Justice shall consist of 15 Judges.

Article 222 (ex Article 166)

The Court of Justice shall be assisted by eight Advocates-General. However, a ninth Advocate-General shall be appointed as from 1 January 1995 until 6 October 2000.

It shall be the duty of the Advocate-General, acting with complete impartiality and independence, to make, in open court, reasoned submissions on cases brought before the Court of Justice, in order to assist the Court in the performance of the task assigned to it in Article 220.

Article 223 (ex Article 167)

The Judges and Advocates-General shall be chosen from persons whose independence is beyond doubt and who possess the qualifications required for appointment to the highest

⁶⁹ Convention on Certain Institutions Common to the European Communities, 25 March 1957, 298 UNTS 267 (1957), Article 3. Treaty Establishing the European Community, 25 March 1957, as amended by Treaty Establishing the European Union, 7 February 1992, 1992 OJ (C224) 6, and the Consolidated Version of the Treaty Establishing the European Community, as amended by the Treaty of Amsterdam, OJ (C340) 173. The ECJ’s website is at <http://europa.eu.int/cj/index.htm> See *Manual*, note 34, Chapter 8.

⁷⁰ For Judges and Advocates-General, see Article 223 (ex Article 167). For judges of the CFI, see Article 225 (ex Article 168a).

⁷¹ S. Kenny, ‘The Members of the European Court of Justice of the European Communities’, 5 *Columbia Journal of European Law* (1998/99) 101. See also the earlier study: W. Field, ‘The Members of the European Court of Justice of the European Communities’, 9 *Villanova Law Review* (1963) 37.

judicial offices in their respective countries or who are jurisconsults of recognised competence; they shall be appointed by common accord of the governments of the Member States for a term of six years.

Every three years there shall be a partial replacement of the Judges. Eight and seven Judges shall be replaced alternately.

Every three years there shall be a partial replacement of the Advocates-General. Four Advocates-General shall be replaced on each occasion. Retiring Judges and Advocates-General shall be eligible for reappointment.

The Judges shall elect the President of the Court of Justice from among their number for a term of three years. He may be re-elected.

Article 225 (ex Article 168a)

1. A Court of First Instance shall be attached to the Court of Justice.

2. The members of the Court of First Instance shall be chosen from persons whose independence is beyond doubt and who possess the ability required for appointment to judicial office; they shall be appointed by common accord of the governments of the Member States for a term of six years. Retiring members shall be eligible for reappointment.

INTER-AMERICAN COURT OF HUMAN RIGHTS

The Inter-American Court of Human Rights, established in 1979, is the principal judicial body supervising the 1969 American Convention on Human Rights.⁷² It hears cases referred by the Inter-American Commission on Human Rights where they involve a state party to the Convention which accepts the Court's jurisdiction or the state party alleged to have violated the Convention.⁷³ It also has advisory jurisdiction under which any member state or authorized organ of the Organisation of American States (OAS) may seek an opinion on the Convention or other human rights treaty to which an OAS member is a party.⁷⁴

Judges: 7. Judges are appointed for 6 year terms and can be elected for a second term. Only 1 woman has ever been elected to the Court: Sonia Picardo-Sotela (Costa Rica) in 1989. Only 3 women have been members of the Commission (current member: Marta Altoleguirre, 1 January 2000.)

Qualifications: Judges must be nationals of a member state of the OAS, with no 2 judges of the same nationality. They must be qualified for "the highest judicial functions" at a national level and "jurists ... of recognized competence in the field of human rights."⁷⁵

Selection process: Candidates are nominated by states parties to the Convention. A state may nominate up to 3 candidates.⁷⁶ The states parties elect the judges at the OAS General Assembly.⁷⁷ Voting is by secret ballot and an absolute majority of votes is required.⁷⁸

Relevant Rules

AMERICAN CONVENTION ON HUMAN RIGHTS, 1969

Article 4

Composition

1. The Court shall consist of seven judges, nationals of the member states of the OAS, elected in an individual capacity from among jurists of the highest moral authority and of recognised competence in the field of human rights, who possess the qualifications required for the exercise of the highest judicial functions under the law of the State of which they are nationals or of the State that proposes them as candidates.

2. No two judges may be nationals of the same State.

Article 5

Judicial Terms

1. The judges of the Court shall be elected for a term of six years and may be re-elected only once. A judge elected to replace a judge whose term has not expired shall complete that term.

2. The terms of office of the judges shall run from January 1 of the year following that of their election to December 31 of the year in which their terms expire.

3. The judges shall serve until the end of their terms. Nevertheless, they shall continue to hear the cases they have begun to hear and that are still pending, and shall not be replaced by the newly elected judges in the handling of those cases.

...

⁷² American Convention on Human Rights, 22 November 1969, 9 ILM 673 (1970). See *Manual*, note 34, Chapter 19.

⁷³ Articles 61 and 62. Acceptance of the jurisdiction can occur by general declaration or special agreement.

⁷⁴ Article 64.

⁷⁵ Article 4(1).

⁷⁶ Articles 7 and 8.

⁷⁷ Article 7(1).

⁷⁸ Article 9.

Article 7

Candidates

1. Judges shall be elected by the States Parties to the Convention, at the OAS General Assembly, from a list of candidates nominated by those States.
2. Each State Party may nominate up to three candidates, nationals of the state that proposes them or of any other member state of the OAS.
3. When a slate of three is proposed, at least one of the candidates must be a national of a state other than the nominating state.

Article 8

Election - Preliminary Procedures

1. Six months prior to expiration of the terms to which the judges of the Court were elected, the Secretary General of the OAS shall address a written request to each State Party to the Convention that it nominate its candidates within the next ninety days.
2. The Secretary General of the OAS shall draw up an alphabetical list of the candidates nominated, and shall forward it to the States Parties, if possible, at least thirty days before the next session of the OAS General Assembly.
3. In the case of vacancies on the Court, as well as in cases of the death or permanent disability of a candidate, the aforementioned time periods shall be shortened to a period that the Secretary General of the OAS deems reasonable.

Article 9

Voting

1. The judges shall be elected by secret ballot and by an absolute majority of the States Parties to the Convention, from among the candidates referred to in Article 7 of the present Statute.
2. The candidates who obtain the largest number of votes and an absolute majority shall be declared elected. Should several ballots be necessary, those candidates who receive the smallest number of votes shall be eliminated successively, in the manner determined by the States Parties.

EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights is the permanent judicial body that supervises the 1950 European Convention on Human Rights and Fundamental Freedoms and its Additional Protocols.⁷⁹ Until 1998 it heard cases referred by the European Commission of Human Rights and inter-state complaints. With the entry into force of Protocol 11, the Commission was abolished and the Court was established as a permanent court that hears applications directly from individuals and states parties. The Court has appellate and limited advisory jurisdiction.

Judges: Currently 41, reflecting the number of states parties to the Convention.⁸⁰ Judges are appointed for 6 year terms which may be renewed.⁸¹ In April 2001, 3 new judges were elected and 13 judges were re-elected. 3 more Judges were elected at the end of June 2001.

Female Judges: 8, Elisabeth Palm, Vice-Pres. (Swe), Françoise Tulkens (Belg), Nina Vajic (Croat), Wilhelmina Thomassen (Neth), Margarita Tsatsa - Nikolovska (FYROM), Hanne Sophie Greve (Nor), Viera Stráznická (Slovak), Snejana Botoucharova (Bulg); Elizabeth Steiner (Aus), Antonella Mularoni (San Marino). Helga Pedersen (Den) was the first woman judge (1971-80) and Denise Bindschedler-Robert (Swis) also served on the Court (1975-1991).

The Deputy Registrar is a woman: Maud De Boer - Buquicchio (Neth).

Qualifications: The judges must be of “high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.”⁸² There is a compulsory retiring age of 70.⁸³

Selection Process: Each state party is entitled to nominate 3 candidates (not necessarily its nationals) for its seat. In 1999 there has been a non-binding review process under which names are submitted to an ad hoc group of representatives within the Council of Europe. The judges are elected by the Parliamentary Assembly of the Council of Europe by a majority of votes.⁸⁴

Gender provisions: The Court’s Rules provide that “the Court shall pursue a policy aimed at securing a balanced representation of the sexes” in its election of Presidents and Vice-Presidents, Registrars and Deputy Registrars.⁸⁵

Relevant Rules

1950 CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS (AS AMENDED BY PROTOCOL 11)

Article 20

Number of judges

The Court shall consist of a number of judges equal to that of the High Contracting Parties.

Article 21

Criteria for office

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.

2. The judges shall sit on the Court in their individual capacity.

3. During their term of office the judges shall not engage in any activity which is

⁷⁹ Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950, ETS 5 (1950), 213 UNTS 221, as amended by Protocol 11, 11 May 1994, ETS 155 (1994). *Manual*, note 34, Chapter 18.

⁸⁰ Article 20.

⁸¹ Article 23 (1).

⁸² Article 21(1).

⁸³ Article 23 (6)

⁸⁴ Article 22 (1) and (2).

⁸⁵ Rule 14. See also Res.1200 of the Council of Europe, 24 September 1999.

incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22

Election of judges

1. The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

2. The same procedure shall be followed to complete the Court in the event of the accession of new High Contracting Parties and in filling casual vacancies.

Article 23

Terms of office

1. The judges shall be elected for a period of six years. They may be re-elected. However, the terms of office of one-half of the judges elected at the first election shall expire at the end of three years.

2. The judges whose terms of office are to expire at the end of the initial period of three years shall be chosen by lot by the Secretary General of the Council of Europe immediately after their election.

3. In order to ensure that, as far as possible, the terms of office of one-half of the judges are renewed every three years, the Parliamentary Assembly may decide, before proceeding to any subsequent election, that the term or terms of office of one or more judges to be elected shall be for a period other than six years but not more than nine and not less than three years.

4. In cases where more than one term of office is involved and where the Parliamentary Assembly applies the preceding paragraph, the allocation of the terms of office shall be effected by a drawing of lots by the Secretary General of the Council of Europe immediately after the election.

5. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of his predecessor's term.

6. The terms of office of judges shall expire when they reach the age of 70.

7. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.'

EUROPEAN COURT OF HUMAN RIGHTS: RULES OF COURT

STRASBOURG 1999 (As in force on 1 November 1998)

Rule 14 (Balanced representation of the sexes)

In relation to the making of appointments governed by this and the following chapter of the present Rules, the Court shall pursue a policy aimed at securing a balanced representation of the sexes.

[Note: By its terms rule 14 applies to the actions of the Court in respect of Chapter II (Presidency) appointments to Presidency and Vice-Presidencies and Chapter III (Registry) re election of Registrar and Deputy Registrars.]

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS (ORGANIZATION OF AFRICAN UNITY)

The 1998 Protocol to the 1981 African Charter on Human and Peoples' Rights provides for establishment of the Court of Human and Peoples' Rights.⁸⁶ When operational, the Court's jurisdiction will cover disputes about the Charter and any other relevant human rights instrument ratified by the States concerned.⁸⁷ It will hear cases instituted by the African Commission on Human and Peoples' Rights, States Parties and by individuals and OAU-accredited NGOs where a state party has made an appropriate declaration.⁸⁸ It will also have advisory jurisdiction.⁸⁹ The Commission is an independent body of 10 experts created in 1987 to review periodic reports by states parties to the Charter and receive individual communications alleging violations of the rights in the Charter.

Judges: 11 judges appointed for 6 year terms with the possibility of 1 further term. (There are currently 4 women members on the Commission).

Qualifications: Judges must be nationals of Member States of the OAU, and be "jurists of high moral character and of recognised practical, judicial or academic competence and experience in the field of human and peoples' rights".⁹⁰ No 2 judges may have the same nationality. The composition of the Court as a whole should reflect "representation of the main regions of Africa and of their principal legal traditions."⁹¹ The Protocol also provides that "(i)n the election of the judges, the Assembly shall ensure that there is adequate gender representation."⁹²

Selection Process: Nomination by states parties of up to 3 candidates, only 2 of whom may be its nationals. There is a specific requirement to give "due consideration" to adequate gender representation in the nomination process.⁹³ The election is not by the states parties to the Protocol, but by the Assembly of Heads of State and Governments of the OAU. The Protocol only provides that it is to be by secret ballot.⁹⁴

Relevant Rules

PROTOCOL ON THE ESTABLISHMENT OF AN AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

Article 11

Composition

1. The Court shall consist of eleven judges, nationals of Member States of the OAU, elected in an individual capacity from among jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights.

2. No two judges shall be nationals of the same State.

⁸⁶ African Charter on Human and Peoples' Rights, 27 June 1981, 21 ILM58 (1982) (the Banjul Charter). Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court of Human and Peoples' Rights, 1998, OAU. Doc. OAU/LEG/Min/AFRCHR/PROT 1, Rev. 2. The Protocol requires 11 ratifications for entry into force. As of 1 January 2001, there were 3 ratifications. See *Manual*, note 34, Chapter 20.

⁸⁷ Protocol, Article 3(1).

⁸⁸ Protocol, Article 5.

⁸⁹ Protocol, Article 4.

⁹⁰ Protocol, Article 4.

⁹¹ Protocol, Article 14(2).

⁹² Protocol, Article 14(3).

⁹³ Protocol, Article 12(2)

⁹⁴ Protocol, Article 14(1).

Article 12

Nominations

1. States Parties to the Protocol may each propose up to three candidates, at least two of whom shall be nationals of that State.

2. Due consideration shall be given to adequate gender representation in the nomination process.

Article 13

List of candidates

1. Upon the entry into force of this Protocol, the Secretary-General of the OAU shall request each State Party to the Protocol to present, within ninety (90) days of such a request, its nominees for the office of judge of the Court.

2. The Secretary-General of the OAU shall prepare a list in alphabetical order of the candidates nominated and transmit it to the Member States of the OAU at least thirty days prior to the next session of the Assembly of Heads of State and Government of the OAU hereinafter referred to as “the Assembly”.

Article 14

Elections

1. The judges of the Court shall be elected by secret ballot by the Assembly from the list referred to in Article 13(2) of the present Protocol.

2. The Assembly shall ensure that in the Court as a whole there is representation of the main regions of Africa and of their principal legal traditions.

3. In the election of the judges, the Assembly shall ensure that there is adequate gender representation.

Article 15

Term of office

1. The judges of the Court shall be elected for a period of six years and may be re-elected only once. The terms of four judges elected at the first election shall expire at the end of two years, and the terms of four more judges shall expire at the end of four years.

2. The judges whose terms are to expire at the end of the initial periods of two and four years shall be chosen by lot to be drawn by the Secretary-General of the OAU immediately after the first election has been completed.

3. A judge elected to replace a judge whose term of office has not expired shall hold office for the remainder of the predecessor's term.

4. All judges except the President shall perform their functions on a part-time basis. However, the Assembly may change this arrangement as it deems appropriate.

INTERNATIONAL CRIMINAL TRIBUNAL FOR FORMER YUGOSLAVIA

Established by the Security Council in the exercise of its power under Chapter VII of the UN Charter to try persons alleged to have committed genocide and other serious violations of international humanitarian law in the territory of the former Yugoslavia since 1991.⁹⁵ The ICTY has 3 Trial Chambers and an Appeals Chamber of 7 judges of whom 5 sit on each appeal. As of 14 June 2001, it includes a pool of 27 ad litem judges of whom up to 9 may be appointed to the Tribunal for particular cases.⁹⁶

Judges: 16 permanent judges. Elected for terms of 4 years which can be renewed. The ad litem judges are not eligible for re-election.

Number of women: 2, Florence Mumba (Zambia), Vice Pres., Patricia Wald (US). The number of women judges drops to 1 as of 16 November 2001 with election of the Theodore Meron (US). (Previous judges: Gabrielle Kirk McDonald (US) Pres. and Elizabeth Odio-Benito (Costa Rica)). On 13 June 2001, the General Assembly elected 27 ad litem judges, 8 of whom are women: Carmen Argibay (Arg), Maureen Harding Clark (Ire), Fatoumata Diarra (Mali), Ivana Janu (Czech Rep), Vonimbolana Rasoazanany (Madag), Chikako Taya (Jap), Christine Van Den Wyngaert (Belg), Sharon Williams (Can). There were 64 candidates of whom 14 were women. Subsequently, 5 were appointed as judges ad litem in a pool of 9 judges.

Carla Del Ponte (Swis) is the present prosecutor. Judge Louise Arbour (Can) was the previous Prosecutor.

Qualifications: Judges must be of appropriate reputation and qualified for appointment to the highest judicial offices in their home state. Due account is to be taken of experience in criminal law, international law, including international humanitarian law and human rights law. In the selection process, the pool of names that are put forward for election must “take due account of the adequate representation of the principal legal systems of the world”. No 2 nationals from the same state can be appointed. There are also limits on nationality to take account of the fact that the Appeals Chamber of the ICTR shares judges with the ICTY.⁹⁷

Selection process: Permanent Judges are elected by the General Assembly from a list agreed by the Security Council. The list is based on nominations received from states and is limited to 22-33 candidates (for 11 vacancies). An absolute majority of votes in the General Assembly is required. Ad litem judges are elected by the General Assembly from a list of no less than 54 candidates agreed by the Security Council. States may nominate up to 4 candidates (“taking into account the importance of fair representation of female and male candidates”)⁹⁸. In the first election for the judges ad litem the Secretary-General wrote to states to remind them of this new requirement.⁹⁹

Relevant Rules

STATUTE OF THE INTERNATIONAL TRIBUNAL FOR FORMER YUGOSLAVIA

⁹⁵ Statute of the International Tribunal for Yugoslavia: International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991, UN Doc S/RES/827 (1993). Article 12-14 amended by the Security Council: Resolution 1329 (2000), UN Doc S/RES/1329 (2000), paras. 1-4, Annex I, (meeting: 30 November 2000, dist 5 December 2001.) The Tribunal’s jurisdiction is limited to the crimes in Articles 2-5 of the Statute. See *Manual*, note 34, Chapter 23.

⁹⁶ Articles 12(1) and 13*ter* of the Statute.

⁹⁷ Article 13*bis*(1)(b) of the Statute.

⁹⁸ Article 13*ter*(1)(b) of the Statute.

⁹⁹ Memorandum by the Secretary - General, A/55/18.

Article 12

Composition of the Chambers

1. The Chambers shall be composed of sixteen permanent independent judges, no two of whom may be nationals of the same State, and a maximum at any one time of nine ad litem independent judges appointed in accordance with article 13 ter, paragraph 2, of the Statute, no two of whom may be nationals of the same State.

2. Three permanent judges and a maximum at any one time of six ad litem judges shall be members of each Trial Chamber. Each Trial Chamber to which ad litem judges are assigned may be divided into sections of three judges each, composed of both permanent and ad litem judges. A section of a Trial Chamber shall have the same powers and responsibilities as a Trial Chamber under the Statute and shall render judgement in accordance with the same rules.

3. Seven of the permanent judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

Article 13

Qualifications of judges

The permanent and ad litem judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers and sections of the Trial Chambers, due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

Article 13 bis

Election of permanent judges

1. Fourteen of the permanent judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in article 13 of the Statute, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a judge of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (hereinafter referred to as "The International Tribunal for Rwanda") in accordance with article 12 of the Statute of that Tribunal.

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-eight and not more than forty-two candidates, taking due account of the adequate representation of the principal legal systems of the world.

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect fourteen permanent judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

2. In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of article 13 of the Statute, for the remainder of the term of office concerned.

3. The permanent judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Court of Justice. They shall be eligible for re-election.

Article 13 ter

Election and appointment of ad litem judges

1. The ad litem judges of the International Tribunal shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for ad litem judges of the International Tribunal from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters.

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to four candidates meeting the qualifications set out in article 13 of the Statute, taking into account the importance of a fair representation of female and male candidates.

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than fifty-four candidates, taking due account of the adequate representation of the principal legal systems of the world and bearing in mind the importance of equitable geographical distribution.

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect the twenty-seven ad litem judges of the International Tribunal. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters shall be declared elected.

(e) The ad litem judges shall be elected for a term of four years. They shall not be eligible for re-election.

2. During their term, ad litem judges will be appointed by the Secretary-General, upon request of the President of the International Tribunal, to serve in the Trial Chambers for one or more trials, for a cumulative period of up to, but not including, three years. When requesting the appointment of any particular ad litem judge, the President of the International Tribunal shall bear in mind the criteria set out in article 13 of the Statute regarding the composition of the Chambers and sections of the Trial Chambers, the considerations set out in paragraphs 1 (b) and (c) above and the number of votes the ad litem judge received in the General Assembly.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

Established by the Security Council in the exercise of its power under Chapter VII of the UN Charter to try persons alleged to have committed genocide and other serious violations of international humanitarian law in 1994 in Rwanda.¹⁰⁰ The ICTR has 3 Trial chambers and an Appeals Chamber.

Current Bench: 16 permanent judges (expanded from 14 in 2001). Judges are elected for terms of 4 years which can be renewed. Number of women: 3 (Navanthen Pillay (SA), Pres., Andresia Vaz (Senegal) (replacing Karma Laity (Senegal) from May 2001- appointed by UN Secretary - General) and Arlette Ramaroson (Madagas) (elected as one of the 2 additional judges on 24 April 2001). In August 2002, the Security Council decided to create a pool of 14 ad litem judges.

The present prosecutor is a woman (Carla Del Ponte (Swis)).

Qualifications: Judges must be of appropriate reputation and qualified for appointment to the highest judicial offices in their home state. Due account is be taken of experience in criminal law, international law, including international humanitarian law and human rights law. In the selection process, the pool of names that are put forward for election must “take due account of the adequate representation of the principal legal systems of the world”. No 2 nationals from the same state can be appointed. There are also limits on nationality to take account of the fact that the Appeals Chamber of the ICTR shares judges with the ICTY.¹⁰¹ The judges of the Appeals Chamber of the ICTY also serve as members of the ICTR Appeals Chamber, along with 2 judges elected to the ICTR.

Selection/Election: Judges are elected by the General Assembly based on a list agreed by the Security Council. That list is based on nominations received from states and is limited to 22-33 candidates (for 11 vacancies). An absolute majority of votes in the GA is required. The rules for ad litem judges are similar to those for the ICTY (see Security Council Resolution 1431 dated 14 August 2002.)

Relevant Rules

STATUTE OF THE INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA

(See also see the amendments in Security Council Resolution 1431 dated 14 August 2002.)

Article 11

Composition of the Chambers

The Chambers shall be composed of sixteen independent judges, no two of whom may be nationals of the same State, who shall serve as follows:

- (a) Three judges shall serve in each of the Trial Chambers;
- (b) Seven judges shall be members of the Appeals Chamber. The Appeals Chamber shall, for each appeal, be composed of five of its members.

Article 12

Qualification and election of judges

1. The judges shall be persons of high moral character, impartiality and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the

¹⁰⁰ Statute of the International Tribunal for Rwanda: The International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States, between 1 January 1994 and 31 December 1994, UN Doc S/RES/955, Annex (1994). Article 11, 12, 13 amended by the Security Council: Resolution 1329 (2000) UN Doc S/RES/1329(2000), paras 1-4, Annex II (meeting: 30 November 2000, dist 5 December 2001).

¹⁰¹ Articles 12 (2) and 13 of the Statute, as amended.

experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

2. Eleven of the judges of the International Tribunal for Rwanda shall be elected by the General Assembly from a list submitted by the Security Council, in the following manner:

(a) The Secretary-General shall invite nominations for judges from States Members of the United Nations and non-member States maintaining permanent observer missions at United Nations Headquarters;

(b) Within sixty days of the date of the invitation of the Secretary-General, each State may nominate up to two candidates meeting the qualifications set out in paragraph 1 above, no two of whom shall be of the same nationality and neither of whom shall be of the same nationality as any judge who is a member of the Appeals Chamber and who was elected or appointed a permanent judge of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (hereinafter referred to as “the International Tribunal for the Former Yugoslavia”) in accordance with article 13 bis of the Statute of that Tribunal;

(c) The Secretary-General shall forward the nominations received to the Security Council. From the nominations received the Security Council shall establish a list of not less than twenty-two and not more than thirty-three candidates, taking due account of the adequate representation on the International Tribunal for Rwanda of the principal legal systems of the world;

(d) The President of the Security Council shall transmit the list of candidates to the President of the General Assembly. From that list the General Assembly shall elect eleven judges of the International Tribunal for Rwanda. The candidates who receive an absolute majority of the votes of the States Members of the United Nations and of the non-member States maintaining permanent observer missions at United Nations Headquarters, shall be declared elected. Should two candidates of the same nationality obtain the required majority vote, the one who received the higher number of votes shall be considered elected.

3. In the event of a vacancy in the Chambers amongst the judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary - General shall appoint a person meeting the qualifications of paragraph 1 above, for the remainder of the term of office concerned.

4. The judges elected in accordance with this article shall be elected for a term of four years. The terms and conditions of service shall be those of the judges of the International Tribunal for the Former Yugoslavia. They shall be eligible for re-election.

Article 13

Officers and members of the Chambers

1. The judges of the International Tribunal for Rwanda shall elect a President.

2. The President of the International Tribunal for Rwanda shall be a member of one of its Trial Chambers.

3. After consultation with the judges of the International Tribunal for Rwanda, the President shall assign two of the judges elected or appointed in accordance with Article 12 of the present Statute to be members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia and eight to the Trial Chambers of the International Tribunal for Rwanda. A judge shall serve only in the Chamber to which he or she was assigned.

4. The members of the Appeals Chamber of the International Tribunal for the Former Yugoslavia shall also serve as the members of the Appeals Chamber of the International Tribunal for Rwanda.

5. The judges of each Trial Chamber shall elect a Presiding Judge, who shall conduct all of the proceedings of that Trial Chamber as a whole.

INTERNATIONAL CRIMINAL COURT

The 1998 Rome Statute of the International Criminal Court¹⁰² provides for the establishment of a permanent court with jurisdiction to try individuals charged with crimes of genocide, crimes against humanity, war crimes and aggression.¹⁰³ The Statute entered into force on the first of July and the election of judges will occur early next year. The jurisdiction of the Court will extend to cases brought by the Prosecutor where there is an appropriate territorial connection with a state party or a non-party which accepts jurisdiction or the person charged is a national of such states.¹⁰⁴ The Security Council acting under Chapter VII of the UN Charter may also refer a situation to the Prosecutor.¹⁰⁵ The Court's jurisdiction will be complementary to national courts.¹⁰⁶ There will be 3 Divisions: Pre-Trial, Trial and Appeals.

Judges: The Court will have 18 judges who will serve 9 year terms that are not renewable.¹⁰⁷

Qualifications: Judges must be nationals of states parties, but no two judges of the same nationality may serve at the same time. Candidates must be qualified for the highest judicial office in their own country. Half the judges must have established competence and necessary relevant experience in criminal law and procedure. The other half must have competence in areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.

The states parties must, in the selection of judges, take into account the need, within the membership of the Court, for: (1) the representation of the principal legal systems of the world; (2) equitable geographical representation; and (3) a fair representation of female and male judges; (4) judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

Method of selection: The statute contains detailed provisions on nomination and selection. The states parties may, at the Assembly of States Parties, create an Advisory Committee on nominations. Nomination is by states parties following either the process for appointments to their highest national court or to the ICJ and election is by a majority of votes and two-thirds majority of the states parties present and voting.

Gender qualifications: The procedures for the elections will be settled at the September meeting of the first Assembly of States Parties. Article 36(8)(iii) provides for a "fair representation" of men and women. One commentator (and delegate at the Rome Conference) cited the representative of Slovakia as observing that it meant "as balanced a representation of female and male judges as possible".¹⁰⁸ While the drafting history is less supportive of some kind of numerical balance,¹⁰⁹ the word "fair" clearly implies something close to equal representation. Moreover, there is no reason to read it as less important than the requirements of representation of legal systems and geographic regions, both of which are insisted upon by states.

¹⁰² Rome Statute of the International Criminal Court, 17 July 1998, UN Doc PCNICC/1999/INF/3.

¹⁰³ See Part 2 of the Statute, Article 17 (1)(d) (only cases of sufficient gravity); aggression will only be covered once a definition is agreed (Article 5(2)); and there is scope for a state party to exclude by declaration war crimes for up to 7 years (Article 124). The Statute will not apply retroactively (Article 1).

¹⁰⁴ Article 17(1)(d).

¹⁰⁵ Article 13(b).

¹⁰⁶ Article 1.

¹⁰⁷ Article 36 (1). The initial appointments will be staggered with 6 judges serving 3 years (and eligible for re-election for a full term), 6 serving 6 years and 6 serving 9 years.

¹⁰⁸ Steains, note 8 at 379, nt.71.

¹⁰⁹ Steains, note 8, at 377-378.

Relevant Rules

ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT

Article 36

Qualifications, nomination and election of judges

1. Subject to the provisions of paragraph 2, there shall be 18 judges of the Court.

...

3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.

(b) Every candidate for election to the Court shall:

(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;

(c) Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court.

4. (a) Nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either:

(i) By the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or

(ii) By the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court.

Nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3.

(b) Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party.

(c) The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

5. For the purposes of the election, there shall be two lists of candidates:

List A containing the names of candidates with the qualifications specified in paragraph 3(b)(i); and

List B containing the names of candidates with the qualifications specified in paragraph 3(b)(ii).

A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the two lists.

6. (a) The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting.

(b) In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled.

7. No two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

8. (a) The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for:

- (i) The representation of the principal legal systems of the world;
- (ii) Equitable geographical representation; and
- (iii) A fair representation of female and male judges.

(b) States Parties shall also take into account the need to include judges with legal expertise on specific issues, including, but not limited to, violence against women or children.

9. (a) Subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election.

(b) At the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years.

(c) A judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term.

10. Notwithstanding paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

Article 42

The Prosecutor

...

9. The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children.

Article 44

Staff

1. The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

2. In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard, *mutatis mutandis*, to the criteria set forth in article 36, paragraph 8.

INSPECTION PANEL OF THE WORLD BANK

The Inspection Panel is an administrative body established in 1993 to investigate complaints concerning projects financed by the World Bank, the International Bank for Reconstruction and Development (IBRD) and the International Development Association (IDA).¹¹⁰ Its mandate is limited to requests for inspection alleging non-compliance with the Bank's operational policies and procedures. Requests may be made by affected parties (individuals or groups) from the territory of the borrowing state. As of 22 March 2001, there have been 19 formal requests.

Current Panel: 3 members, 1 Chairman and 2 members (6 appointments since it became operational). Number of women: 1, Ms Maartje Van Putten, appointed October 1999.

Qualifications: Panel members are appointed for non-renewable 5 year terms. They elect their Chairperson for a one year renewable term. Panelists must be nationals of Bank Members, with no two members from the same state. They are expected to be independent, have had some exposure to developmental issues and living conditions in developing countries, and, preferably, have knowledge and experience of the World Bank's operations.

Selection/Election Process: Appointed by the World Bank's Board of Directors acting on the nominations of the President of the World Bank.

Relevant Rules

Resolution dated 22 September 1993 (No IBRD 93-10; No IDA 93-6)
Composition of the Panel

...
2. The Panel shall consist of three members of different nationalities from Bank member countries. The President, after consultation with the Executive Directors, shall nominate the members of the Panel to be appointed by the Executive Directors.

3. The first members of the Panel shall be appointed as follows: one for three years, one for four years and one for five years. Each vacancy thereafter shall be filled for a period of five years, provided that no member may serve for more than one term. The term of appointment of each member of the Panel shall be subject to the continuity of the inspection function established by this Resolution.

4. Members of the Panel shall be selected on the basis of their ability to deal thoroughly and fairly with the requests brought to them, their integrity and their independence from the Bank's Management, and their exposure to developmental issues and to living conditions in developing countries. Knowledge and experience of the Bank's operations will also be desirable.

5. Executive Directors, Alternates, Advisors and staff members of the Bank Group may not serve on the Panel until two years have elapsed since the end of their service in the Bank Group. For purposes of this Resolution, the term "staff" shall mean all persons holding Bank Group appointments as defined in Staff Rule 4.01 including persons holding consultant and local consultant appointments.

6. A Panel member shall be disqualified from participation in the hearing and investigation of any request related to a matter in which he/she has a personal interest or had significant involvement in any capacity.

¹¹⁰ Resolution dated 22 September 1993, IBRD No 93-10 and IDAA Res No 93-6; 34 ILM 520 (1995); reviewed in 1996 and 1999. See also Operating Procedures, Inspection Panel for the International Bank for Reconstruction and Development and the International Development Association, 19 August 1994, 34 ILM 510.

7. The Panel member initially appointed for five years shall be the first Chairperson of the Panel, and shall hold such office for one year. Thereafter, the members of the Panel shall elect a Chairperson for a period of one year.

8. Members of the Panel may be removed from office only by decision of the Executive Directors, for cause.

9. With the exception of the Chairperson who shall work on a full-time basis at Bank headquarters, members of the Panel shall be expected to work on a full-time basis only when their workload justifies such an arrangement, as will be decided by the Executive Directors on the recommendation of the Panel.