

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE ANSWERED BY VIKTOR PANAGIOTIS TSILONIS (GREECE)

A. Nomination process

1. The Statute requires every candidate for election to the Court to 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 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.

Could you please describe your experience and competence in the areas specified? For how long? In which capacity?

As founder, chief executive officer and principal legal counsel of the niche Greek law firm [Newlaw](#), I have a 16-year track record of excellence in handling criminal cases. During the course of my career to date, I have honed my legal, administrative and public speaking skills to the level required by an ICC judge. Further, I am actively involved in the ICC's fora and thus familiar with the criminal proceedings of the Court. As a [member of the ICC Disciplinary Board](#) (2018-2022), I have tried a number of disciplinary cases. In 2019, I was elected [Joint Vice President for Victims](#) and [Chairman of the Professional Standards Advisory Committee](#) of the International Criminal Court Bar Association (ICCBA), the only Bar Association formally recognised by the Assembly of States Parties.

As a recognized expert in international law, I was selected to join the OSCE Consultancy Roster of Legal Experts in 2018 and the Roster of Experts of the International Nuremberg Principles Academy in 2017, and have been accepted as a member of the International Law Association and the European Society of International Law. I have taught postgraduates International Criminal Justice (2018–2019) at the Law School of the Democritus University of Thrace (Greece), participated in nine conferences and been invited to deliver several university speeches. Fourteen of my publications (12 papers and 2 books) cover the fields of international criminal law,

international criminal justice, international human rights, criminal law and procedure, and prisoners' rights.

As part of my wide-ranging legal studies in the UK and in Greece, I completed a PhD on the jurisdiction of the International Criminal Court. I therefore have a uniquely well-rounded knowledge of the way legal systems work, whether they are founded upon civil law, common law or international legal frameworks. Having also served as a junior legal advisor to the Office of the Prosecutor for the Former Yugoslavia (Milosevic case), I intend to utilise my experience and legal expertise, as well as my sound leadership and organizational skills, to serve the Court with distinction. Last but not least, my expertise as well as my dedication to the Court are captured in my recent book under the title: [*The Jurisdiction of the International Criminal Court* \(Springer, 2019\) ISBN 978-3-030-21525-5](#), the product of over 10 years of research on the International Criminal Court. Like much of my work, this publication was inspired by the Court's values and reflects my profound belief in the Court's aims.

2. Do you have any experience or competence in handling litigation or inquiring or investigating into issues related to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children? In which capacity?

As a criminal defence and victims' lawyer for the last sixteen years, I have been continuously representing victims in litigation, inquiring about or investigating issues related to domestic violence, discrimination, sexual assaults and other similar conduct, including that inflicted on women and children. Moreover, a criminal case which concerned Greek citizens of Muslim religion attracted the legal world's attention and was published internationally [["Les Misérables of Thessaloniki in 2011: A Practical Case Study of Human Rights and Human Abuse"](#) in M. Zirk-Sadowski, B. Wojciechowski and K. M. Cern (eds.), **Towards Recognition of Minority Groups**, (London: Ashgate, 2014).

Finally, my extensive experience in this field is also documented by the fact that after being elected to the Executive Council of the International Criminal Court Bar Association, I was elected by the Executive Council members as joint vice-president for victims and chairman of the Professional Standards Advisory Committee. In the former capacity, I participated in 2020 in the Cluster II discussions with the Panel of Independent Experts and suggested in cooperation with my learned colleagues reform

proposals related *inter alia* to the function of the Victims and Witnesses Unit, the Office for Public Counsel for Victims and the enhancement of victims' representation.

- 3. Have you ever been investigated for, or charged with, allegations of corruption, criminal or administrative negligence or any other similar misconduct, including sexual harassment? Was there a conclusive determination?**

I would like to solemnly declare that this has never happened.

Perception of the Court

- 1. What would be the main criticisms you are aware of in relation to the Court's proceedings?**

The main criticisms in relation to the court's proceedings I am aware of are related to: **1)** the length of proceedings ([the main issue of concern for the German Parliament](#)); **2)** the arguably limited number of cases brought before the Court since 2002; **3)** the alleged high cost of its operation in comparison to its overall performance and effectiveness ([The Elders, group of former world leaders](#)); **4)** the alleged Prosecutor's focus on certain regions of the world (Africa); **5)** the fact that recently situations have been brought before the Court (Afghanistan, Palestine), the judicial examination of which involves nationals of powerful states that have not ratified the Rome Statute. Thankfully, the Court has repeatedly provided convincing answers to many points of the aforementioned criticism, while the recent appearances of ICC President Chile Eboe-Osuji on [BBC HARDtalk](#) in 23 June 2020 and on [The Conflict Zone on Deutsche Welle](#) in 2019 constitute exemplary responses to much of this critique.

- 2. Do you have any suggestions on changes that could be proposed in order to improve the perception of the Court in the eyes of the international community?**

I believe that the Court should increase its outreach activities. Additionally, court officials and judges could increase their presence and participation at academic conferences and publications. Moreover, I believe that raising the donations to the Trust Fund for Victims is an issue of critical importance. Finally, I believe that the Victims and Witnesses Unit should be allocated more funds and human resources in order for victims and witnesses to feel that they and their families are well protected and hence do not fear testifying and assisting the Court with its critical mission for humanity.

3. Which are, in your view, the most important decisions issued by the Court in the past years, that have had an important impact in relation to its perception *vis-à-vis* the States Parties and the public? Could you give and explain at least one positive and one negative example?

One of the decisions that has had an important positive impact in relation to the Court's perception *vis-à-vis* the States Parties and the public was *The Prosecutor v. Ahmad Al Faqi Al Mahdi* decision of Trial Chamber VIII of the International Criminal Court (ICC) in 27 September 2016. In this case, the Chamber unanimously found Mr Al Mahdi guilty beyond reasonable doubt as a co-perpetrator of the war crime consisting in intentionally directing attacks against religious and historic buildings in Timbuktu, Mali in June and July 2012. On 22 August 2016, at the opening of the trial, Mr Al Mahdi pleaded guilty to the war crime of attacking ten historic and religious monuments in Timbuktu (Mali) in 2012. This was the first time an accused before the ICC admitted *ab initio* his/her guilt. The expeditious outcome of this case as well as the message to the international community that the Court is a principal protector of humanity's cultural heritage and fully respects victims' right to reparation to the best of the Trust Fund's resources was heralded by the international press and media as clear evidence of the Court's strong will to promote justice, shield human civilization and care for victims.

On the other hand, one of the decisions which was viewed as having a negative impact in relation to its perception *vis-à-vis* the States Parties and the public was the *Bemba* Appeals Chamber decision. Leila N. Sadat eloquently summarized the main criticisms of the Appeals Chamber decision in Bemba in June 2018 on the eminent blog EJIL:Talk under the title "[Fiddling While Rome Burns? The Appeals Chamber's Curious Decision in Prosecutor v. Jean-Pierre Bemba Gombo](#)". The critique was mainly focused on the prolonged judicial process, the Prosecutor's alleged deficiencies, the considerable allocation of fiscal and human resources and the overturn of the unanimous Trial Chamber's decision by a divided Appeals Chamber (3-2), which eventually led to the exoneration of the accused. However, one should not overlook that at the same time the Court proved undeniably that the conferment of justice and not the mere conviction of an accused is its principal and legitimate aim.

B. Judge's independence

1. What in your view should be the relationship between a Judge and the authorities of his or her country of origin? Similarly, how do you envisage your future

relationship with bodies such as universities, courts or non-governmental organizations with which you have been involved or to which you have been affiliated, if elected to the ICC?

I firmly believe that an international judge should keep their distance from the authorities of his/her country of origin in order to secure his/her independency and impartiality. Moreover, if elected as a judge to the ICC I shall resign from my position as Executive Director from the NGO Intellectum, after 14 years of continuous service. Finally, as far as universities and academic institutions are concerned I have currently no active affiliations, however do candidly believe that a judge should be allowed to participate occasionally in academia because his/her participation can significantly assist in the dissemination of the Court's work and legacy. In any case, a judge must be clear when collaborating with outside agencies and individuals about the maintenance of his/her independence and impartiality at all times.

2. In your view, can a Judge participate in a trial involving a national from his or her country of origin? Why?

I strongly believe that, especially for reasons linked to the general perception of fairness by the public/international community, a judge should not participate under normal circumstances in a trial involving a national from his /her country of origin. This approach fully conforms with the *lege artis* interpretation of Article 41§2(a) ICCRSt.

3. Which jurisprudence/decisions do you consider necessary, useful and appropriate to be considered during proceedings at the ICC? From national courts? From international courts? From Human Rights bodies?

First of all, it should be underlined that none of the statutes of the preexisting international criminal tribunals contained a provision regarding the 'applicable law'. Therefore, in the field of international criminal justice before the ratification of the Rome Statute by 60 states in July 2002, the judges were traditionally left to determine themselves the additional sources of law that they would draw upon, and the relative weight of the said sources. However, pursuant to Article 21 of the Rome Statute of the International Criminal Court (hereinafter ICCRSt), under the title "Applicable law", the Court shall apply primarily the Rome Statute, the Elements of Crimes and its Rules of Procedure and Evidence (hereinafter RPE). Secondly, "applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict" can be applied where appropriate; "Failing that,

general principles of law derived by the Court from national laws of legal systems of the world [...] The Court may apply principles and rules of law as interpreted in **its previous decisions**. The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights...” [my emphasis]. Therefore Article 21 ICCRSt is a legal innovation quite different in content than the provision regarding the authoritative list of sources of public international law set out in Article 38(1) of the Statute of the International Court of Justice (hereinafter SICJ):¹

Consequently, eminent sources of international law could be taken into account where appropriate and relevant, including the jurisprudence of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, and the decisions of the Human Rights Council. Consequently in *Bashir*, Pre-Trial Chamber I held that ‘those other sources of law provided for in paragraphs (l)(b) and (l)(c) of article 21 of the Statute, can only be applied when the following two conditions are met: (i) there is a lacuna in the written law contained in the Statute, the Elements of Crimes and the Rules; and (ii) such lacuna cannot be filled by the application of the criteria provided for in articles 31 and 32 of the Vienna Convention on the Law of the Treaties and article 21(3) of the Statute’.²

4. In your view, what should be the approach of an independent Judge when faced with precedents established by the Appeals Chamber of the Court?

An independent judge of the ICC should pay utmost respect to the precedents established by the Appeals Chamber of the Court. This should happen not only due to the ethical responsibility of a new judge but also because the Rome Statute dictates so. In particular Article 21 ICCRSt under the title Applicable law the Court expressly states in its second paragraph that “The Court may apply principles and rules of law as interpreted in its previous decisions”. Unequivocally, the said provision is different than the provision of Article 59 SICJ, which declares that ‘the decision of the Court has no

¹ Article 38(1) of the Statute of the International Court of Justice verbatim states: “The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; (b) international custom, as evidence of a general practice accepted as law; (c) the general principles of law recognized by civilized nations; (d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.” See also William A. Schabas, *The International Criminal Court: A Commentary on The Rome Statute* (OUP 2016), p. 511 *et sub*.

² *Bashir* (ICC-02/05-01/09), Decision on the Prosecutor’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, 4 March 2009, para. 126.

binding force except between the parties and in respect of that particular case'; however it expressly defines the distinct legal philosophy of the Rome Statute and the fact that in criminal cases of such gravity a precedent cannot be easily overlooked. On the other hand, Article 21§2 ICCRSt rejects the *stare decisis* principle, because the provision is of an advisory and not mandatory nature ("may apply"). Nor does the provision *prima facie* establish any hierarchy in terms of the decisions of the various Chambers of the Court, as it was ruled quite early on that the Pre-Trial and Trial Chambers are not 'inferior courts'.³ However *de lege ferenda* a precedent of the Appeals Chamber should be followed in most subsequent cases as rightly pointed out by eminent academics.⁴ Certainly this does not exclude the rare possibility of an established precedent not being followed in another similar case, especially when the precedent in question concerns a particularly complex legal issue on which the Chamber itself is far from unanimous. However, on such an exceptional occasion, there must be compelling and extraordinary reasons for a judge to depart from the well-established case law of the Appeals Chamber; reasons that the current nominee finds difficult to envisage, although theoretically their existence cannot be excluded.

5. Do you consider that a Judge or a Chamber of the Court, in order to ensure efficiency, should be allowed to implement innovative procedural practices? If yes, please give examples.

Efficiency is always a critical factor and indicator of the quality of the judicial function and the conferment of justice overall. Therefore, I believe that in cooperation with the President of the Court and my learned colleagues I will be able to propose and implement innovative procedural practices, which would enhance the conferment of justice. One innovative procedural practice that I believe might prove to be particularly effective and which I would like to propose is linked to the COVID-19 health crisis and similar or even worse pandemics that might occur in the future, as forecast by the World Health Organisation.

³ The Pre-Trial and Trial Chambers of the International Criminal Court are in no way inferior courts in the sense that inferior courts are perceived and classified in England and Wales. Hence, any comparison between them and inferior courts under English law is misleading. See Situation in the Democratic Republic of the Congo (ICC-01/04), Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, page 12, para. 30, https://www.icc-cpi.int/CourtRecords/CR2006_01806.PDF.

⁴ William A. Schabas, *The International Criminal Court: A Commentary on The Rome Statute* (OUP 2016), pp. 526-527.

Given the evident drawbacks of teleconferencing (the great time zone differences between all interested parties (accused, counsel, prosecutor, witnesses, victims, accused, judges, interpreters/court's staff members) and the inevitable connection problems (as witnessed firsthand by the nominee during a recent ICC disciplinary hearing) and the need for justice to be conferred live and in person, I would suggest the following: a protocol for the courtroom's sanitisation as well as participants' disinfection before entering the court (e.g. all participants are required to wear face shields and stay in personal booths with minimal contact to each other) and the installation of special devices which will disinfect the clothes and objects of all participants before entering the courtroom (e.g. [disinfection chambers](#)) and [constantly clean the air](#) while all persons are required to be inside the courtroom. The adoption of such a procedural innovation will not merely allow the Court to operate normally during a pandemic but will also place the ICC at the forefront of procedural innovation and enhance its international status via its innovative approach to working seamlessly while ensuring the safety of judges, staff and participants.

6. Are you used to working as part of a team? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems? How would you deal with a disagreement in relation to a certain aspect of a decision? What are your views in relation to writing separate concurring and dissenting opinions?

During the past sixteen years, I have been fortunate to be part of teams with many people from various social, cultural, and scientific/legal backgrounds, primarily in the fields of legal practice, academia and non-governmental organisations. The people I have been honoured to get to know and collaborate with had many distinct qualities, wide-ranging knowledge and vast experience. These noteworthy attributes enriched the teams and made them more innovative and effective; and even occasional disagreements eventually proved to be merely another way to reach our common goal and true objective, whether this meant winning an important legal case, writing a landmark report on the prison conditions throughout Greece or publishing an eminent multidisciplinary journal on thought and culture. Therefore, I feel quite blessed to have been a member of these teams.

As far as writing separate concurring and dissenting opinions are concerned, I feel that while unanimity is *prima facie* preferred, the existence of separate concurring and dissenting opinions is essential for the enrichment of the Court's jurisprudence and evolution of international criminal law. Therefore, I feel positive about their meaningful publication whenever appropriate (i.e. when it is impossible to reach consensus after discussing an issue at length). That said, it remains the case that unanimous decisions are usually the ones which establish legal landmarks.

7. In which situations, in your view, should a Judge of the Court recuse himself or herself from a case?

A judge should recuse himself/herself from a case only when he/she cannot perform his/her duties impartially and independently pursuant to Article 41§2(a) ICCRSt,⁵ which utilises the open-ended expression “a judge shall not participate in any case in which his or her impartiality might reasonably be doubted **on any ground**” [my emphasis].

C. Workload of the Court

1. Are you prepared and available to serve at the commencement and for the duration of your term, if elected and if called to work at the Court full-time?

Yes, I am fully prepared and available as described.

2. In the event you are not called immediately to work full-time at the Court, are you prepared to do so only as of the moment when you are requested to do so, knowing that this may mean a delay of several months or a year or more from the commencement of your term as judge?

Clearly this would not be an ideal development, given that I will have to resign from certain posts immediately after my election. However, I am totally prepared to do so as of the moment I am requested to according to the Court's needs.

3. Work as a Judge of the ICC frequently involves many hours a day, including into the evenings and over some weekends. Holidays can only be taken at fixed periods

⁵ Article 41§2(a) ICCRSt “A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, *inter alia*, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted.

during the year when, for instance, there are no hearings. Are you prepared for that?

I have done so for my whole life and thus I am quite happy to continue doing so.

4. What is your approach to writing decisions? Will you undertake this work yourself? To what extent would you delegate drafting to assistants or interns?

In view of the many years I have spent as an academic writer and author of the book [The Jurisdiction of the International Criminal Court](#) (Switzerland: Springer, 2019), writing constitutes my second nature. Therefore, writing decisions myself is something I would love to do and have already done for several cases as a member of the ICC Disciplinary Board. However, depending on the workload and the number of duties assigned to me by the Court, I would not exclude the possibility of delegating the drafting of factual parts of a decision to assistants or interns according to my directions, provided of course that such delegation would conform with the ICC's judicial tradition and practice and the Chamber would agree.

5. Which are, in your view, the decisions that could and should be issued by a Single Judge in order to expedite proceedings?

Pursuant to the provisions of: **a)** Article 39§2(b)(iii) ICCRSt and **b)** Rule 7 RPE, it is clearly stipulated that the Rome Statute and the Rules of Procedure and Evidence initially allowed only for a single judge in the pre-trial stage and not any delegation of authority to a Single Judge during trial. Nevertheless, in 2012 the RPE were amended in order to allow a Single Judge of the Trial Chamber to ensure the preparation of the trial. However, due to concerns relating to conformity with Article 39(2)(b) ICCRSt and the undeniable fact that in the event of any conflict between the Statute and the Rules of Procedure and Evidence, the Statute shall always prevail, a conservative approach was eventually adopted. As such, the role of the trial judge acting alone is limited to the preparatory work while the more substantive issues remain solely within the remit of the full Trial Chamber. Consequently, based on the aforementioned provisions, I believe that the delegation of powers upon a single judge should always be exercised with caution and within the limits analysed above in order to: **1)** ensure proper disclosure between the parties, **2)** order protective measures, **3)** deal with applications by victims for participation in the trial, pursuant to Article 68§3 ICCRSt, **4)** confer with the parties regarding issues referred to in regulation 54 of the Regulations of the Court, **5)** schedule procedural matters (excluding the date of the trial), **6)** deal with the conditions of

detention and related matters and 7) deal with any other preparatory matters that must be resolved and do not otherwise fall within the exclusive competence of the Trial Chamber.

6. Are you used to working under pressure from States, governmental authorities, national or international organizations, the media or the wider public? Can you provide an example?

During the last sixteen years as a principal lawyer I have handled high-profile criminal and civil law cases ranging from the potential murder of a police officer by fellow officers (*Kalyva* application before the European Court of Human Rights) to the total erasure of significant financial debts for reasons related to human dignity. As a result, I was explicitly and/or implicitly under constant pressure from parties and various actors for a considerable period of time. If I would have to single out a real-life example on which I worked continuously under great pressure from important actors as well as on behalf of the wider public, this would be [The Power of Minus](#) two-year public campaign I conceptualised and faithfully implemented along with the Intellectum NGO team of volunteers. “The Power of Minus” public campaign had a remarkable impact despite facing various challenges including strange incidents ranging from thefts (one laptop and office keys stolen under particularly mysterious circumstances) to other intimidating actions (internet threats, hundreds of reports to Facebook and other social media in order to ban our content). However, neither myself nor the other team members were ever intimidated or discouraged by such incidences: we remained adamant that we were serving the public good and implementing a public campaign to promote human rights that was ethically commendable. Thus we continued and completed The Power of Minus two-year public campaign project with unparalleled success.

7. Are you in good health and able and prepared to work under pressure, given the Court’s heavy workload? Have you ever been on leave from your professional duties due to exhaustion or any other work-related incapacity? If yes, for how long?

I am in a very productive stage of my life and in very good health. I exercise daily and am used to working under pressure. I have never been on leave from my professional duties due to exhaustion or in fact any other reason.

D. Deontology

1. What is your definition and understanding of an independent Judge?

I define an independent judge as one who examines impartially the evidence of the case file and weighs with absolute fairness the 'for and against' evidence/arguments of the parties before issuing with clear conscience his/her decision, without succumbing at any stage to any pressure, while always complying with the rules of deontology.

I would also like to refer to the **Basic Principles on the Independence of the Judiciary**, which were adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and were endorsed by the UN General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985 as they offer a sound basis for defining and understanding what an independent judge truly is and how an independent judge should conduct himself/herself in his/her ordinary life.

2. In your view, what would constitute a conflict of interest for a Judge?

Given that a conflict of interest is usually regarded as a situation in which a person pursues multiple interests, financial, personal, ethical or otherwise, having any more than one interest could jeopardise the proper pursuit of another. The Model Canon Rule 2.11 ([Disqualification](#)) of the American Bar Association thoroughly describes the principal instances where a judge should disqualify himself/herself, whenever such a situation arises. The same guidelines are duly described, albeit much more concisely, in Rule 34 RPE under the title "Disqualification of a judge, the Prosecutor or a Deputy Prosecutor" and Article 42§2(a) ICCRSt which eloquently states that "[a] judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground". Consequently in my view the existence of any kind of personal interest in a case, or the involvement of a judge in a private capacity in any legal proceedings, or the performance of conflicting functions prior to taking office, or the public expression of opinions relevant to a case constitute sound grounds for a judge recusing himself/herself from the case because of a potential conflict of interest.

3. Should considerations relating to race, colour, gender or religion be taken into account when assessing a candidate's suitability to be a judge at the ICC? Why?

I believe that such considerations should not in principle be taken into account when assessing a candidate's suitability to be a judge at the ICC. My belief is not only based on ethical or human rights grounds (Article 2 of the Universal Declaration of Human

Rights, Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the European Convention on Human Rights) but also on the Rome Statute, which itself expressly stipulates in Article 21§3 ICCRSt that no such criteria should ever exist regarding the application and interpretation of law. Nonetheless, Article 36§8 ICCRSt justifiably stipulates that the States Parties shall, in the selection of judges, take into account the needs set out in connection with membership of the Court. Namely: (i) to represent the principal legal systems of the world; (ii) equitable geographical representation; and (iii) fair representation of female and male judges.

- 4. Have you ever been the subject of disciplinary, administrative, criminal or civil proceedings in which your professional or ethical standing has been called into question? If yes, please provide details, including the outcome.**

No, never.

- 5. Have you ever been disciplined or censured by any bar association, university faculty or similar entity of which you may have been a member? If yes, please provide details, including the outcome.**

No, never.

- 6. What measures and decisions would you take, if you are elected, to ensure the effective participation by victims in the proceedings?**

I believe that the effective participation of victims in proceedings is an issue of great importance that requires more systemic changes and amendments in order to be implemented appropriately. However, I also believe that a judge could certainly assist with the effective participation of victims in the proceedings by: **1)** allowing the participation of victims in the pre-trial stage pursuant to Article 57 under “Functions and powers of the Pre-Trial Chamber”, which expressly states in paragraph 3(c) and (e) that it is within the powers of a Pre-Trial Chamber to provide where necessary for “the protection and privacy of victims and witnesses, the preservation of evidence, the protection of persons who have been arrested or appeared in response to a summons, and the protection of national security information” and to take protective measures for the purpose of forfeiture “where a warrant of arrest or a summons has been issued under article 58 [...] for the ultimate benefit of victims”, **2)** enhancing the rights of the victims’ counsels and ordering the counsels’ access to facilities as early as possible and

3) assigning better qualified and experienced lawyers as counsel in order to apply the equality of arms principle *lato sensu*.

7. In reaching a decision, how would you approach the need to balance the rights of an accused person and the rights of victims, which are both protected by the ICC’s legal texts?

The need to balance the rights of an accused person and the rights of victims is a critical issue for the conferment of justice and its overall quality and therefore quite understandably an issue which has attracted the attention of scholars lately.⁶ The Rome Statute considers *ab initio* this critical issue. Clearly, the provision of Article 53§1 ICCRSt (Initiation of an investigation) balances the rights of accused and the victims from the investigation stage onwards.⁷

Undoubtedly, **the principal article** regarding the victims’ protection and their participation in the proceedings is Article 68 ICCRSt, under “Protection of the victims and witnesses and their participation in the Proceedings”, where it is stated:

1. The Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. In so doing, the Court shall have regard to all relevant factors, including age, gender [...] and health, and the nature of the crime [...] where the crime involves sexual or gender violence or violence against children. [...] These measures shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. 2. As an exception to the principle of public hearings provided for in article 67, the Chambers of the Court may, to protect victims and witnesses or an accused, conduct any part of the proceedings in camera or allow the presentation of evidence by electronic or other special means. In particular, such measures shall be implemented in the case of a victim of sexual violence or a child [...] 3. Where the personal interests of the victims are affected, the Court shall permit their views [...] to be presented and considered [...] in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

⁶ Juan Pablo Perez-Leon-Acevedo and Joanna Nicholson (eds.), *Defendants and Victims in International Criminal Justice: Ensuring and Balancing Their Rights*, (London: Routledge), (2020).

⁷ “(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice”. Contemporaneously, the rights of the accused are found in the 1(a) and 1(b) provisions of Article 53 ICCRSt where it is noted: “unless there is no reasonable basis to proceed under this Statute”, “[t]he information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed” and “[t]he case is or would be admissible under article 17”.

Moreover, Article 64 ICCRSt under the title “Functions and powers of the Trial Chamber” stresses in paragraph 2 that “The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses”. In paragraph 6(e) of the said Article it is reiterated that “In performing its functions [...] during the course of a trial, the Trial Chamber may [...] [p]rovide for the protection of the accused, witnesses and victims”. Additionally Article 65 ICCRSt under the title “Proceedings on an admission of guilt” stresses in paragraph 4 that “Where the Trial Chamber is of the opinion that a more complete presentation of the facts of the case is required in the interests of justice, in particular the interests of the **victims**, the Trial Chamber may: (a) Request the Prosecutor to present additional evidence, including the testimony of witnesses; or (b) Order that the trial be continued under the ordinary trial procedures provided by this Statute [...]” Hence, the complete adherence to the aforementioned provisions and their just application and enforcement will greatly assist me in balancing the rights of an accused person and the rights of victims, given that all of them refer both to the accused and victims and establish a delicate balance between their rights.

On the other hand, Article 67 ICCRSt refers explicitly to the rights of the accused and the utmost importance of their respect. Hence it is duly stressed that the accused shall:

- 1)** have a public, fair and impartial hearing;
- 2)** be informed in an understandable language of the exact charge(s) and his/her rights;
- 3)** have adequate time and facilities for the preparation of his/her defence;
- 4)** communicate freely with his/her counsel(s);
- 5)** be tried without undue delay;
- 6)** examine the witnesses against him or her and call and examine defence witnesses;
- 7)** be entitled to raise defences and present evidence;
- 8)** have *gratis* the assistance of a competent interpreter and translation services
- 9)** not be compelled to testify or confess guilt and remain silent, without such silence affecting the determination of guilt or innocence;
- 10)** be able to make an unsworn oral or written statement in his/her defence;
- 11)** never been imposed upon him/her any reversal of the burden of proof or any onus of rebuttal;
- 12)** have knowledge of and access to evidence in the Prosecutor's possession or control which are in favour of his/her innocence or mitigate his/her guilt or affect the credibility of prosecution evidence.

Finally yet importantly, on a personal note, I believe that victims’ rights should always be fully respected and that victims should always have the right to express their views and concerns from a very early stage of the proceedings. However the rights of the

victims should not reach the point where the rights of the accused are violated or victims act as a quasi ‘second prosecutor’ (as often ends up being the case in civil jurisdictions) or overtly delay proceedings. I also believe that the legal representatives of victims should be granted full access to the case file and confidential material, while the access for victims themselves should be more limited, following the sound practice which has been developed by the Court over the years. Finally the victims should be able to call and (cross-) examine witnesses but inevitably there must a limit on the number of witnesses that victims can call and the allocated time they can utilize for this purpose must always be appropriate to justice being conferred fairly and properly.

E. Additional information

- 1. Are you fluent in one of the working languages of the Court? Can you speak fluently in public hearings and meetings, and write your own decisions in one of the languages of the Court?**

I am fluent in English and can certainly speak fluently in public hearings and meetings. As an academic I have participated in more than 10 conferences which required my paper to be presented in English. Moreover I can and have already as a member of the ICC Disciplinary Board written my own decisions in English and have also prepared unofficial French translations of draft decisions for other members of the Disciplinary Board when this was required in order to expedite proceedings.

- 2. Do you have any other nationality, other than the one indicated in your nomination, or have you ever requested another nationality?**

I do not have any other nationality and have never requested another.

- 3. Have you familiarized yourself with the conditions of service (which include the remuneration and the pensions’ scheme) for the Judges of the Court? Are you aware of, and do you accept, the Terms and Conditions of work?**

Yes I have; I am also aware of and accept the Terms and Conditions of work.

- 4. If elected, are you willing to participate in a financial disclosure program organized by the ICC?**

Yes, I would be willing in principle.

5. Is there any other information which should be brought to the attention of the Committee and which might call into question your eligibility for judicial office?

I sincerely do not believe that any other such information exists.

F. Disclosure to the public

1. You have the option to make your answers to this questionnaire public. What is your preference in this regard?

My preference is to make my answers to this questionnaire **publicly** available.

CONFIDENTIAL