ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE

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 a Pre-Trial judge at the Kosovo Specialist Chambers since 2019, I have dealt with cases involving crimes against humanity, war crimes and offences against the administration of justice. I have rendered over 350 oral and written decisions, including decisions confirming indictments, authorising searches and seizures, authorising witness protection measures, admitting victims to participate in the proceedings and other issues pertaining to the pre-trial procedure for criminal cases. My role is very similar to that of the Pre-Trial Chamber at the International Criminal Court.

I have practised law in French-speaking and English-speaking countries, in civil and common law systems. I have worked as an investigating magistrate in France and as a liaison judge in the United States. I have extensive experience of comparative criminal proceedings, international legal cooperation and of hybrid legal systems.

I have also practised extensively in the field of judicial diplomacy. I was a diplomatic advisor to the French Justice Minister and Chef de Cabinet to the President of the Special Tribunal for Lebanon. I have negotiated international agreements and arrangements between States and also with international criminal courts in the field of judicial cooperation for example.

I have extensive experience of working in a multicultural context. I have worked in national courts, in several government departments, in embassies, in international organisations and in international courts. I have managed teams of lawyers from a wide variety of countries. I have also been involved in several projects to strengthen capabilities to improve the implementation of the principle of complementarity. I have led continuous professional development sessions for judges from various countries.

I have been involved in a number of projects to enhance the efficiency and quality of international criminal justice, such as the Paris Declaration on the Effectiveness of International Criminal Justice, the ICC review (Independent Expert Review - IER) in 2020, and the Ethica Project in 2022/2023 for which I was the scientific coordinator. Led by the Nuremberg Academy, the Siracusa International Institute for Criminal Justice and Human Rights and the Ecole nationale de la magistrature in France, along with the Presidents of the international criminal courts, we drew up 25 ethical principles applicable to international criminal judges.

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?

Interviewing vulnerable victims: As an investigating magistrate, I led investigations and the pre-trial procedure for a large number of criminal cases involving violence and sexual assaults against women and children. Working on these cases meant that I often interviewed vulnerable victims and I introduced protocols to take into account their vulnerability and to avoid multiple interviews, which can lead to further trauma.

Implementing legislation on violence against women: In my role as a legal advisor to the Minister of Justice in France in 2009/ 2010, I coordinated monitoring in parliament of the law on violence against women, domestic violence and the impact on children. This law established the offence of psychological abuse under French law and the implementation of a protection order for victims. It also enabled electronic tags to be used to ensure that perpetrators of violence were kept away from their victims.

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?

No.

B. Perception of the Court

1. What is your view of the International Criminal Court and its dual nature as a judicial entity and as an international organisation? In your view, what are the main differences between the ICC and the two ad hoc tribunals for the former Yugoslavia and for Rwanda?

Dual nature of the Court: As the author of the first chapter of the review of the Court (IER), I offered an analysis of the dual nature of the Court, both as a judicial entity and as an international organisation (Recommendations 1-7 in the Report). As a judicial entity the Court must be completely independent. As an international organisation, the States Parties may reasonably expect to be able to be involved in the governance of the institution since they adopt the budget and ensure the funding of the Court. Article 112 of the Statute thus provides that the Assembly of States Parties shall provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court. I also proposed a three-layered analysis of the governance of the Court: judicial activity and prosecutions, the administration of justice and administration of the international organisation. Each layer forms part of a framework and requires different levels of independence and reporting lines.

Comparison with the ad hoc tribunals: The two ad hoc tribunals, now replaced by the International Residual Mechanism for Criminal Tribunals, have separate governance arrangements because they are subsidiary bodies of the Security Council, rather than treaty-based independent international organisations. The governance of the ad hoc tribunals is incorporated into the United Nations Framework. Furthermore, these tribunals were created to rule on cases emanating from a single situation, whereas the ICC has a much broader geographical jurisdiction. However, there are certain points in common, such as the election of judges by States and the applicable substantive criminal law (even though the definitions of crimes are not identical).

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

Criminal policy: Some States, just like some sections of civil society, have criticised the politicisation of certain decisions to open investigations, often with double standards. The weakness of the evidence in the Prosecutor's case files, especially in the early years of the Court, has also occasionally been commented upon. Finally, the unequal treatment of situations at the stage when the gravity of the crimes or the interests of justice are evaluated, pursuant to article 53 of the Statute, is the occasional focus of criticism.

Efficiency of proceedings: Proceedings at the Court are occasionally criticised for being slow and because of their cost. There is a perception that the duration of the phases when evidence is disclosed and when judgments are drafted could be reduced. Decisions are also occasionally criticised for their lack of concision.

Collegiality: The Court is sometimes criticised for a lack of collegiality among the judges and the high number of dissenting and concurring opinions. Divergent case law has also been criticised.

Compensation for victims: The Court is criticised because the reparations phase begins late in the proceedings and also because it is often considered to be very slow. The lack of resources of the Trust Fund for Victims is sometimes also criticised.

3. 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?

Speeding up proceedings: Schedules for proceedings and setting deadlines for the parties and also for each chamber, tools which I have introduced at the Kosovo Specialist Chambers, must become widespread. It would also be useful to compile actual files of proceedings, by encouraging better organisation and classification of the evidence so that the parties can work more quickly. Artificial intelligence could also be used as a tool to assist with identifying evidence.

Enhancing legal certainty: To strengthen the coherence of the case law of the Court, the Rome Statute system must be applied in a uniform fashion, rather than national law. In my view, greater use could be made of tools which aim to promote the uniformity of practices, such as the ICC Chambers Practice Manual. A more measured use of dissenting and concurring opinions could also reinforce the authority of decisions.

Relations with international civil society: In the Review of the Court (IER), we suggested that the Court should work more with civil society with the aim of strengthening support from NGOs and promoting its work in the field (Recommendations 153 to 155). Such synergy should encourage interest and trust from people affected by the work of the Court.

4. 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?

A number of the Court's decisions have generated comments, whether positive, questioning or negative. However, given the different points of view, in particular those of States and NGOs, it is not easy to categorise decisions as having generated only positive or only negative reactions. Often there have been a range of reactions and they express different legal positions or diplomatic perspectives. However, a certain number of decisions which have triggered controversy or approval may be cited.

Decision on the jurisdiction of the Court: The decision by Pre-Trial Chamber I on 5 February 2021, which held that the Court could exercise its criminal jurisdiction in the situation in Palestine, and that its territorial jurisdiction extended to the Gaza strip and the West Bank, generated a lot of comments. The decision, which then led to the opening of the investigation by the Office of the Prosecutor, was greeted with some enthusiasm in light of criticisms of impunity in this geographical region. However, it also triggered strong criticism from certain countries, the United States in particular.

Decision to open an investigation: The decision by Pre-Trial Chamber II on 12 April 2019 in the situation in Afghanistan, which rejected the request to open an investigation for crimes against humanity and war crimes on the grounds that an investigation would not serve the interests of justice, was fiercely contested because it could be seen as demonstrating the incapacity of the Court to rule in situations affecting Western states. The decision was subsequently overturned on appeal.

Decisions concerning the guilt of the accused: Two acquittal decisions led to criticism and questions being raised: the acquittal of Jean-Pierre Bemba by the Appeals Chamber on 8 June 2018 and also the acquittal of Laurent Gbagbo by Trial Chamber I on 15 January 2019, which was confirmed on appeal in 2021. Although an acquittal at the end of a trial is always a possibility, the fact that these decisions were rendered after relatively lengthy proceedings caused indignation among the victims and representatives of civil society.

However, it should also be emphasised that several decisions have been the focus of generally positive comments from States and civil society, in particular because these decisions were among the first to recognise crimes in specific areas.

Protecting cultural heritage: The judgment of Trial Chamber VIII of 27 September 2016 in the case of Ahmad Al Mahdi, rendered in the wake of proceedings with a guilty plea, was welcomed by civil society and numerous States in that it recognised the protection of cultural heritage under international criminal law. However, the judgment was criticised in law with regard to the timing of the attack under international humanitarian law.

Recognising child soldiers and sexual and gender-based violence: The decision of Trial Chamber IX on 4 February 2021 in the Ongwen case was welcomed by the international community as it constituted an application of the crimes of forced pregnancy and forced marriage (recognised along with other inhumane acts as an underlying offence of the crime against humanity), and of the crime of conscripting and using children under the age of 15 to participate in hostilities. The decision was confirmed on appeal.

C. 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?

A judge's relationship with his or her country of origin: Article 40 of the Statute, and Article 3 of the Code of Judicial Ethics of the ICC provide that judges shall be independent in the performance of their functions and that they shall uphold the independence of their office and the authority of the Court. They must therefore remain

independent vis-à-vis the authorities of their country of origin, which implies that they must receive no instruction from them and should not place themselves in a situation of dependency in relation to them. They must therefore never discuss pending cases or situations in which the Court is involved. They should also exercise caution when interacting with States, and in particular if they plan to attend events organised or sponsored by States which may have an interest in proceedings or investigations which are pending or likely to become so. Under no circumstances should they discuss the substance of cases pending before their court.

A judge's relationship with other non-governmental organisations: The relationship of a newly elected judge to the Court with any teaching establishment or other non-governmental organisations is only possible if it is compatible with their judicial role or does not cast doubt upon their independence. Furthermore, international criminal judges should not be members of or be involved in the management of or participate in activities organised by or sponsored by organisations involved in activism or litigation, or which submit observations, at either a national or an international level if this might create a conflict of interest.

Relationships with bodies with which I have previously been affiliated: I believe it is necessary to rule out any collaboration with establishments which have adopted a position regarding cases I may be called upon to hear. The ICC judges exercise their functions full time, so it is also not possible for judges to continue with their previous professional activities. Furthermore, article 40 of the Statute and article 10 of the Code of Judicial Ethics provide that judges shall not engage in any activity which is likely to interfere with their judicial functions or with the effective and expeditious functioning of the Court, and not engage in any activity which might affect or reasonably appear to affect confidence in their independence. Any relationship with the afore-mentioned establishments must therefore not hinder the swiftness of proceedings, nor the judges being independent and being seen to be impartial.

Regulating extra-judicial activities: As Chef de Cabinet to the President of the Special Tribunal for Lebanon, I implemented a practice directive for the extra-judicial activities of judges. As the scientific coordinator of the Ethica project, I also drafted a recommendation in this regard. Although judges may play a role in programmes presenting the Court, these activities must not impact on the performance of their judicial functions.

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

Impartiality principle: Article 4 of the Code of Judicial Ethics of the Court provides that judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions. They must therefore ensure that the Court is seen to be impartial when discharging their functions.

Applying this principle to a trial involving a national from a judge's country of origin: Although article 41 of the Statute and Rule 34 of the Rules of Procedure and Evidence do not specifically provide for this situation as grounds for recusal, in certain circumstances it could arouse suspicion on the part of the public and of the parties, even though the subjective impartiality of the judge is not in question. However, a question of objective impartiality is probably less likely to arise for a judge in the Appeals Chamber, who deals with appeals on specific points of law rather than detailed assessments of each piece of evidence. Furthermore, it is also possible for the objective impartiality of a judge to depend on the position of the judge's country of origin vis-à-vis a situation country, for example if military personnel were deployed there. The decision by a judge to disqualify

himself or herself is therefore not based on the nationality of a party or a participant in the trial alone. Although it is generally preferable for a judge not to participate in a trial involving a national of his or her country of origin, ultimately the issue must be examined on a case-by-case basis. In my view, the key point is not to shy away from objective issues of impartiality and to discuss these with the Presidency of the Court, before cases are actually assigned.

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?

Applicable law at the Court: Article 21 of the Rome Statute determines the applicable law and establishes a hierarchy between the sources of law. It is also a compromise between the demand for accuracy in terms of the legal rule, which is essential to comply with the principle of legality, and the need to plug any gaps inherent in any new legal system.

Case law from international courts: The Court applies the Statute, the Elements of Crimes and the Rules of Procedure and Evidence in the first place. It is therefore essential that it takes its own case law into account first and foremost to ensure consistency of the applicable law. In the second place, the Court applies applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict. In this regard the Court may take into account the case law of the other international criminal tribunals, in particular that of the ad hoc tribunals. ICC decisions therefore include a large number of footnotes referring to its case law or to that of the other international courts.

Case law of national courts: In the third place the Court may apply the general principles of the law as derived by the Court from national laws. To do so it must also be able to rely on national case law as it interprets national law. However, it should be pointed out that this case law does not set a mandatory precedent for the Court.

Human Rights courts and bodies: Article 21(3) also provides that the application and interpretation of law must be consistent with internationally recognized human rights. It is therefore logical for judges to rely on decisions from regional courts of human rights, and also from human rights bodies when verifying the compatibility of the applicable law with international human rights law. However, these decisions are not mandatory and do not set a mandatory precedent. They are the concrete illustration of a dialogue involving the judges when interpreting international law.

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?

The absence of mandatory precedent in the Statute: Article 21(2) of the Statute provides that the Court may apply principles and rules of law as interpreted in its previous decisions. Being the result of a compromise between the civil and common law systems, this article does not enshrine the principle of *stare decisis*, but it does nonetheless make it possible for the judges to take their previous decisions into account. In this regard the Appeals Chamber of the Court considers that departures from previous case law must only occur in limited circumstances when there are compelling reasons to do so.

The need to ensure consistent case law: The obligation of legal certainty, which is common to all legal traditions, should, however, lead the judges to follow the decisions of the Appeals Chamber. The predictability, accessibility and clarity of the applicable law

are fundamental principles of a fair trial and require coherent case law. It is also an essential condition to ensure the equality of individuals before the law and for States Parties to have trust in the Court. It therefore seems important only to deviate from the precedents of the Appeals Chamber in exceptional circumstances when a change in the applicable law is absolutely necessary. This might include ensuring that the case law of the Court is consistent with that of other international courts, such as the International Court of Justice, and also that of regional courts of human rights. However, it seems essential not to deviate from the precedents of the Appeals Chamber on the sole grounds that a decision differs from the national law of a judge. The law of the Court must be applied and guarantee legal certainty.

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 so, please give examples.**

Judges should be allowed to implement practices to improve the efficiency and expediency of the proceedings. However, it is also always useful to open up discussions on these initiatives and, if they are positive, to try to adopt them Court-wide, for example by incorporating them in the Chambers practice manual, or even in the legal framework of the Court. This avoids divergence of practices which would be detrimental to the unity of proceedings and which might give rise to a perception of inequality. In my capacity as a Pre-Trial Judge at the Kosovo Specialist Chambers, I have therefore introduced a number of innovative practices.

Schedules for proceedings: From the outset of the pre-trial phase, I introduced schedules to determine all the stages of the proceedings after consulting the parties. The schedules were amended if necessary at the many status conferences, which were held every six weeks, at the end of each hearing. The schedules also made it possible to manage the tribunal's resources as efficiently as possible and to render oral decisions on case preparation matters at the end of each hearing.

Framework decisions: At the start of the pre-trial proceedings, I rendered framework decisions on admitting victims to the proceedings, witness protection measures and the disclosure of evidence. Drawing on the case law of the ICC, these decisions made it possible to streamline the proceedings and to facilitate the work of the parties and the participants.

Templates: For a large number of frequent decisions, for example to authorise investigation measures, the templates I created made it possible to render decisions in under 24 hours in urgent cases and to simplify the drafting of decisions.

Transferring the case file to the Trial Chamber: At the end of the pre-trial phase, I transferred all my case files with a document summarising the procedural steps, the agreements between the parties on legal and factual matters, an estimate of the duration of testimony and also points of law which had been resolved. This ensured continuity between the pre-trial and trial phases. The trial chambers were able to begin trials less than three months after the case file had been passed to them.

6. **How do you envisage working with hybrid criminal proceedings, which are different to those you are familiar with in your national functions? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems?**

Knowledge of comparative and international criminal proceedings: For the past 8 years almost I have been working in a context of hybrid criminal proceedings (first at the Special Tribunal for Lebanon then at the Kosovo Specialist Chambers). I also practised in two national systems, in France and in the United States, which has given me theoretical and practical knowledge of the two main models of criminal proceedings, inquisitorial and adversarial.

Working relationship with judges from different legal systems: Working with judges from different systems firstly implies being a good listener, to understand the reasoning put forward. Compromise is also required and one should not seek to impose one's own national system. The law of the international court must always be applied and the efficiency tools from the two legal systems must be combined. For example, I believe it is useful to draw on common law to ensure lively hearings and regular oral decisions to speed up proceedings. The civil law tradition could be drawn upon to build up a proper case file to make it easier for parties to access the evidence at an earlier stage of the proceedings.

7. Are you used to working as part of a team? 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?

Working in a team: My roles have led to me working in teams for almost the entire length of my career. I have had management responsibilities on several occasions, in multi-cultural environments in particular. As Chef de Cabinet to the President of the Special Tribunal for Lebanon, I was responsible for the entire team of lawyers in Chambers and in this regard I am used to the practices and challenges associated with drafting decisions in the international criminal courts. In my judicial practice I have always favoured a collegial approach to my work: listening to colleagues, making compromises at the drafting stage and seeking to understand the logic of their reasoning, especially through the prism of their national law, are all essential in my view.

Disagreements and dissenting and concurring opinions: It is not unusual for disagreements to emerge when a chamber begins its deliberations. However, I feel it is important to try to tease out a common solution by making compromises at the discussion stage. This is the meaning of article 74(3) of the Statute, according to which the judges shall attempt to achieve unanimity in their decision. Dissenting and concurring opinions ought to be limited to new and significant legal issues in my view, where irreconcilable approaches are considered. Insofar as such opinions can weaken decisions and encourage appeals, they should only be used for the most fundamental differences and avoided at the trial stage as much as possible.

D. 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.

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

Yes.

3. The Court has two working languages. What is your view on this? How can the judges of the International Criminal Court better respond to the challenges arising from a multicultural environment?

Using the two working languages: I believe that it is possible to use both working languages. Although the use of English is more widespread in that it is the language which is most often most spoken at the Court, I believe it is important for French to be used on a regular basis for court proceedings, specifically in French-speaking situation countries.

Multilingualism: To encourage multilingualism, it is useful for judges to be able to express themselves in several languages, or at least to have a passive use of the two working languages of the Court, to facilitate discussions during the deliberations phase. Having worked in English and in French during the course of my career, I can preside over hearings, draft decisions and deliberate in both working languages of the court. I also believe it would be useful for the judges to speak other languages, such as Spanish, to facilitate discussions between colleagues and strengthen the evolving universality of the Court. Finally, multilingualism also encourages the dissemination of the case law of the Court in as many countries as possible and fosters trust in the Court and the international legal community as a result.

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?

The writing of decisions before the international criminal courts: The practice in almost all international criminal courts involves delegating the drafting of decisions to the team of lawyers in Chambers, with the judges then actively revising the draft, and making a decision between several proposals if applicable, to ensure that decisions are coherent. The merits of this approach is to enable a panel to render a number of decisions, some of which are very long, which would take a long time if they were all to be drafted by the judges.

Role of the judges in drafting decisions: Although I do not disagree with this approach per se, I do believe that judges should be involved from the start of the drafting process for each decision: firstly by studying all of the written documents submitted by the parties, without waiting for a draft to be produced. Then, by actively discussing the possible solution with their colleagues and the legal team, before beginning the drafting process. Finally, by giving clear drafting instructions to the legal team regarding the structure of the decision, references and solutions to be adopted in particular. I also believe it is essential for the judges to draft certain decisions themselves, at the very least the legal argument and the operative part thereof, if it involves a new point of law or a particularly complex legal point. If necessary, judges whose mother tongue is not one of the working languages of the Court should be assisted by lawyer-linguists. Furthermore, although I am fully in favour of trainees being included in the team and being involved in preparing decisions, I do not consider it feasible for them to be entrusted with drafting decisions or judgments alone, except for very simple decisions, such as deadline extensions. In addition, assistants and trainees should not be helping to prepare the extra-professional activities of judges: they must be fully focused on the work of the Court.

Preparing for hearings: Finally, I consider it essential for judges to draft their own preparatory notes when they are presiding over hearings. The practice of delegating the drafting of notes to assistants means that judges are then reading a document that they themselves have not written, which can be detrimental to the authority of the Presiding Judge over the arguments.

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

Decisions by a Single Judge during the pre-trial phase: As far as the pre-trial stage is concerned, article 39(2) of the Statute provides that the functions of the Pre-Trial Chamber may be carried out by a single judge of that division. However, article 57(2) provides a list of decisions which must be rendered in a collegial manner: authorisation to open an investigation (article 15), decisions on admissibility (articles 18 and 19), authorisation to conduct an investigation on the territory of a State (article 54), confirmation of the charges (article 61) and the protection of national security information (article 72). Furthermore, the Rules of Procedure and Evidence also exclude in some cases the single judge formation by providing for decisions concurred in *by the majority of its judges*. This case applies in particular to investigation decisions when there will be no further opportunities to obtain information (rule 110).

Single judge decisions before the Trial Chamber: Rule 132 bis of the Rules of Procedure and Evidence allow for a single judge to be appointed for the purposes of ensuring the preparation of the trial. Although the scope of the decisions that may be delegated to a single judge is not strictly defined, decisions which seriously infringe the rights of the accused, which affect legal and factual matters at the heart of the case, or which are prejudicial to the basic rights of victims fall outside this scope. Furthermore, the single judge is invited to consult the Chamber for all the necessary preparatory measures to ensure the conduct of fair and expeditious proceedings.

Single judge decisions on appeal: Although this option is not entirely impossible given that the Appeals Chamber has all the powers of the Trial Chamber for appeals from a decision on guilt or sentence (article 83(1)), this practice is not used.

Merits of the single judge approach: I believe that the single judge approach ought to be encouraged for all decisions that involve preparing for proceedings, particularly those that are the most time-consuming, whether at the pre-trial stage, or when preparing for appeals proceedings. In my view this should also be the case for decisions regarding the disclosure of evidence, witness protection measures and also for the admission of victims. Making use of a Single Judge makes it possible to render decisions swiftly and for the parties to have a single point of contact for certain matters. It also makes it possible for a chamber to deal with several cases simultaneously, since the workload will be shared between the different judges in the chamber. However, I am of the view that important decisions, particularly those which involve a new point of law or which have a significant impact on the case, must be decided upon in a collegial manner, even though it is possible for a Single Judge to have jurisdiction.

Possible developments: I can see three potential developments to make it easier to use a Single Judge and streamline the use thereof.

- Allow a Single Judge to refer back to a collegial formation for decisions on new subjects or very important points in a case file.
- Develop the specialism of certain Single Judges by topic during the pre-trial phase (disclosure of evidence or admitting victims for example) to enable them to specialise and thus ensure that decisions are swift and coherent.
- Set out in the Chambers practice manual the arrangements for interaction between the Single Judge and the collegial formation when a single judge has been appointed. The practice of a Single Judge communicating decisions to the collegial formation in advance, which exists in certain chambers, should not necessarily be banned because it allows trust to be built up between the Single Judge and the panel. However, setting guidelines for interactions between the Single Judge and the chamber would make it

easier to clarify how decisions are taken and ensure that the Chamber functions transparently.

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?

Working under pressure in my national or bilateral roles: I have worked on many cases where there was strong pressure from States or civil society. At a national level I dealt with high-profile cases involving the murder or kidnapping of children when I was an investigating magistrate. As a liaison judge in the United States, I worked on requests for mutual assistance on criminal matters following the attack on the *Charlie Hebdo* publication, and I also travelled to Guantanamo on several occasions. I was also involved in providing consular protection to several French nationals sentenced to death in the United States.

Working under pressure in my international role: At an international level, as Chef de Cabinet to the President of the Special Tribunal for Lebanon, which had jurisdiction to prosecute those responsible for the attack against President Hariri, I was required to travel extensively to the Middle East and to New York. As Pre-Trial Judge at the Kosovo Specialist Chambers, I was responsible for preparing for trial a file of crimes against humanity and war crimes involving the current President of Kosovo along with several former ministers and members of parliament. I was the judge who confirmed the indictments and issued the warrants of arrest.

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?

To my knowledge I am in good health and I have never had to take sick leave. I am used to working under pressure and I have never been on leave due to exhaustion or any other work-related incapacity.

E. Deontology

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

Definition of independence: An independent judge must act and decide in accordance with the law and in accordance with the procedural rules in force, on the sole basis of the information argued before them, free from influence or pressure, without fear of punishment or hope of personal gain. A judge must shun on principle and reject any intervention aiming to influence his or her decisions, either directly or indirectly.

Practising independence: Independence also requires from judges a state of mind, soft skills and know-how, which must be taught, developed and refined over the course of their entire career. It must also lead a judge to be transparent with regard to any issues which could lead a reasonable person to doubt their independence. Independence also implies not getting involved in political activities or accepting awards, honours and medals which might give rise to suspicions regarding the actual or assumed influence of a State or an institution on the judges. They must also refrain from developing professional, commercial or business activities, or any other activity, including fund-raising, which could lead to a situation where there is a conflict of interest.

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

Definition of a conflict of interest: Any situation where there is an interference between a public interest and public or private interests which is likely to or could appear to influence the independent, impartial and objective exercise of the judicial role is likely to constitute a conflict of interest. I feel it is useful not only to prevent conflicts of interest but also the appearance of conflicts of interest, which erodes the trust of persons standing trial, civil society and states.

Examples of conflicts of interest: As far as international criminal judges are concerned, these might include being a board member of a non-governmental organisation which is highly active and has very strong views in a situation country of the Court which has been assigned to the judge. They also include a judge having a former senior role in a situation country during the period when the crimes were committed, for example as a diplomat or as a representative of an international organisation.

Preventing conflicts of interest: In the Review of the Court (IER), I drafted the proposals regarding the prevention of conflicts of interest (recommendations 110 to 114). We made several innovative suggestions, such as the principle of a mandatory declaration of interests prior to taking up a post, to identify the risks before being assigned to a case, as well as setting up an ethics committee with a preventive and consultative role.

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?

Non-discrimination principle: Considerations relating to race, colour, gender or religion should absolutely not be taken into account when assessing a candidate's suitability to be a judge at the ICC. These would constitute discriminatory practices which are strictly prohibited by the code of ethics for judges and international human rights instruments.

Principle of inclusion and representation: However, the fair representation of genders and geographical regions are provided for in the Statute to ensure that the Court reflects the diversity of the States Parties and of their civil societies. To achieve this there are rules regarding the minimum number of votes required (for judges), rotation between geographical groups (for the ASP President for example) and deliberate recruitment policies (for Court personnel).

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.

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

Victim participation at the Court: Article 68(3) of the Statute provides for victim participation and this was the focus of important discussions during the negotiations in Rome given the widely divergent legal traditions in this regard: victims do not generally participate in criminal proceedings under common law systems, whereas they can be parties to the trial under the civil law system. Although victim participation at various stages of the proceedings is specifically provided for in the Statute (articles 15(3) and 19(3) in particular), the compromise adopted involves participation where reparations can be awarded without the victims being actual parties to the proceedings. In the absence of any detailed framework on victim participation, the judges have gradually clarified the

process. The Statute gives them broad discretion to determine the subjects on which the victims can present their views, along with the procedure for them to intervene. In my view several innovations ought to be encouraged and others could be envisaged.

Simplifying the application process: Simplifying the forms, using the victims' language, simplifying the legal terminology, having the victims participation section travel to rural or remote areas, and the use of mobile applications for countries which have the necessary infrastructure are all concrete measures which would facilitate access to the Court for victims. In the review of the Court, we also suggested that victims admitted to participate in proceedings should be automatically admitted to participate in any other case opened within the same situation for the same events. (Recommendation 338). We also suggested that the Registry's victims participation section should be given more time to go into the field to identify and talk with victims. I also believe that it is important to adapt the collating of applications to the context of each case, by ensuring that the different sections of the Court responsible for the victims follow the most appropriate processes for each situation country, each community and each type of crime (sexual offences and gender-based violence for example).

Admissibility of applications: The Chambers of the Court have adopted the so-called "ABC" approach, which involves instructing the Registry to classify participation requests into three groups: applicants who can either be clearly described as victims (Group A) or not (Group B), and applicants for whom specific determination by the chamber is required (Group C). This approach, which simplifies the work of the Chamber and speeds up decision-making, is the same as the one I implemented as Pre-Trial Judge at the Kosovo Specialist Chambers. I believe that this practice could now be included in the Rules of Procedure and Evidence since it is already included in the Chambers Practice Manual. For the victims and the Registry this offers better predictability and avoids the Chamber dealing with the case having to render a framework decision on this matter for each proceedings.

Accelerating the reparations phase: To reinforce the efficiency of the reparations process, two innovations may be considered. The first would be to create a special chamber responsible for reparations, which would enable judges to specialise, harmonise the case law and expedite the proceedings. Alternatively, a second option would be to allow the chamber which has ruled on the case during the criminal proceedings to decide on the reparations, an approach which would draw on the judges' detailed knowledge of the case. To make this possible, it would be useful to instruct the Registry's victims participation section to collect applications for compensation during the pre-trial phase, as is already envisaged by Regulation 56, not just once the judgment is rendered. Victims not participating in the proceedings can also make an application for reparations and in their case the legal representative of the victims during the proceedings is unable to gather all the necessary information. Only the victims participation section will be able to collate applications for reparations from victims not participating in the trial. Collating applications should begin during the trial, so that the Chamber can rule on reparations more swiftly.

Confiscating assets: As provided for by article 77(2) of the Statute, confiscating the assets of convicted persons, if they are solvent, would be likely to ensure better compensation for victims. This would help to mitigate the lack of resources of the Trust Fund for Victims.

6. 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?

Scope of victims' rights: Article 68(3) of the Statute allows victims' views and concerns to be presented in a manner which is not prejudicial to or inconsistent with the rights of the accused. It is the judge's responsibility to ensure that this balance is maintained at every stage of the proceedings.

I do not believe that it is necessary, *in order to reconcile the rights of the victims and of the accused*, to restrict in principle the type of applications victims can make during the proceedings, nor the stages of the proceedings at which they may intervene. They must be able to assert their views if their interests are involved. Adopting a framework decision on the rights of the victims at the start of the pre-trial phase often enables a balance to be struck and any conflict to be avoided. The main risk from the point of view of the defence as far as victim participation is concerned is that they become a second prosecutor. During the trial, questions from the representative for the victims should therefore not duplicate those of the Office of the Prosecutor. The role of the Trial Chamber is to be vigilant and ensure that the rights of the defence are safeguarded whilst witnesses are being heard. Furthermore, the defence must always have the last word. Finally, article 67 of the Statute on the rights of the accused states that he or she is entitled to be tried without undue delay. It is therefore the role of the chamber to ensure that victim participation does not cause unreasonable delay in the conduct of the proceedings.

F. 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 working languages of the Court?

Command of the two working languages: French is my mother tongue. However, I have a command of both working languages of the Court for professional purposes. During the course of my career I have been required to draft legal decisions and preside over hearings and chair meetings in both English and French. When I was a judge in France, I presided over hearings and drafted decisions in French. As Pre-Trial Judge at the Kosovo Specialist Chambers I presided over hearings and drafted decisions in English. Whilst in post as a liaison magistrate in the United States, and as a Chef de Cabinet to the President of the Special Tribunal for Lebanon, I was also used to working in both languages simultaneously, both orally and in writing.

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

No.

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.

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

Yes. I would like to point out that I drafted recommendation 110 of the report of Independent Experts (IER), which recommended that the financial disclosure programme should be extended to cover judges. In the same recommendation, I also suggested that

this should be supplemented by an additional declaration of interests, which would cover the activities of new judges over the past three to five years, specifically prior professional activities, involvement in any council, committee or management body of any organisation, as well as membership of or involvement in any society, political party, trade union, non-governmental organisation or foundation.

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?

No.

G. 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 answers may be made public.

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