

ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

QUESTIONNAIRE: GUÉNAËL METTRAUX

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 below? For how long? In which capacity? (par. 2.2 of the Guiding Principles on National-level Procedures for Nominations of Judges of the International Criminal Court)

- a) A graduate and postgraduate legal education, recognizing assets of the postgraduate studies and specialization in the legal fields relevant for the work of the Court;

I have a Law Degree from the University of Lausanne (Switzerland) where I studied criminal law, criminal procedure and international law. I also have a Master Degree (LLM) in international law from the University of London (University College, London) and a Doctorate (PhD) in law from the London School of Economics and Political Science (LSE) (supervisor: Prof. Christopher Greenwood). The title/subject of my doctoral thesis was: *Command Responsibility in International Law – the Boundaries of Criminal Liability for Military Commanders and Civilian Leaders*. The revised version of my thesis was published as a book by Oxford University Press. It was awarded the 2009 Francis Lieber Prize of the *American Society of International Law*.

- b) Professional activities in relevant capacities such as judge, prosecutor, advocate, legal scholar or similar;

As a practitioner, I have 27 years of relevant experience in the field of international criminal law, international humanitarian law, international law and international human rights law. I have practiced in a variety of capacities in at least six international(ised) criminal tribunals (ICTY; ICTR; ICC; STL; ECCC; and KSC) and had limited involvement at the SCSL and State Court of Bosnia-Herzegovina (war crimes chamber). In addition, I have provided advise (to states, state organs, individuals, and legal entities) and training (including to judges, prosecutors, law enforcement agencies, members of armed forces, counsel) in more than two dozen states on several continents on the subject of international criminal law and international humanitarian law.

Among the most relevant aspects of my career in this field are the following:

- I am a Judge at the Kosovo Specialist Chambers (KSC) since 2017;
- I am currently a Judge and member of the Trial Panel hearing the case of *Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi* (KSC-BC-2020-06), in which the Accused are charged with ten counts of war crimes and crimes against humanity;
- I was also a Judge and member of the Trial Panel in the case of *Prosecutor v. Hysni Gucati and Nasim Haradinaj* (KSC-BC-2020-07), which pertained to allegations of intimidation of witnesses and interference with the administration of justice;
- I have acted as counsel and consultant before the ICC, and advised a number of States and state organs in respect of investigations and preliminary examinations before the ICC; in particular, I was consultant for the Defence team of Jean-Pierre Bemba (*Prosecutor v. Bemba*) and counsel for a protected witness;
- I was defence counsel for a number of defendants who appeared before the ICTY, including General Sefer Halilović, former Minister of Interior of (then) FYROM, Ljube Bošković, and General Ante Gotovina (the last one as appellate counsel only);
- I was (appellate) defence counsel in a case before the ICTR (*Prosecutor v. Ngirabatware*);
- I acted as defence counsel before the Special Tribunal for Lebanon (STL) in the first international terrorism case (*Prosecutor v. Ayyash et al*) regarding the assassination of former Lebanese Prime Minister, Rafik Hariri;
- I was consultant for the Defence office of the ECCC and then consultant for Khieu Samphan, former Head of State of Cambodia, and defendant before that jurisdiction (*Prosecutor v. Khieu Samphan*);
- I provided advise to states and state organs, in particular, in respect of national investigations and prosecutions of international crimes and provided training to a number of states, international organisations, individuals and legal entities, and state organs in respect of investigations and prosecutions of international crimes (including in Uganda, the United Kingdom, Sweden, Iraq, Bosnia-Herzegovina, and Canada);
- Between 1999-2003, I was a legal officer at the ICTY, providing legal advise to Judges of that tribunal; I also provided legal advise and assistance to Judges of the ICTR Appeals Chamber in relation to a number of appeals.

In addition, for almost a decade (2012-2021), I was a member and then Chairperson of EULEX's *Human Rights Review Panel* (HRRP), an independent quasi-judicial body responsible for ensuring compliance by the EULEX Mission with its human rights obligations in the execution of its executive mandate. This body produced important legal guidance regarding the application of human rights standards to an international mission (<https://hrrp.eu/> and, in particular, https://hrrp.eu/Case-Law_Notes.php).

Since May 2018, I have also been the Chairperson of the Appeal Board at the Permanent Court of Arbitration (PCA). The Appeal Board is competent to decide staffing disputes

within the PCA and decides its cases based on internal regulations and international administrative law and practice.

I and two colleagues of mine were also granted *amicus curiae* status by the Constitutional Court of South Africa to be heard on issues pertaining to the ICC arrest warrant in respect of former Sudan President, Omar al-Bashir. I was further retained as an expert on issues of due process (and associated issues of human rights law) in two sports arbitrations.

As scholar,

- 1) I have been teaching international criminal law and procedure at various universities for decades; today, I am an Adjunct Professor at the University of Galway, and participate yearly in its International Summer School program on the ICC;
- 2) I have published a large amount of scholarly books and articles on international criminal law, including leading works on the law of genocide, crimes against humanity, command responsibility, and the work of the ad hoc Tribunals:
 - *International Crimes – The Law and the Practice : Volume 1: Genocide* (Oxford University Press, 2019): <https://global.oup.com/academic/product/international-crimes-law-and-practice-volume-i-genocide-9780198843115?cc=us&lang=en&>;
 - *International Crimes – The Law and the Practice : Volume 2: Crimes Against Humanity* (Oxford University Press, 2020): <https://academic.oup.com/oxford-law-pro/book/57765>;
 - *The Law of Command Responsibility* (Oxford: Oxford University Press, March 2009): <https://global.oup.com/academic/product/the-law-of-command-responsibility-9780199559329?cc=us&lang=en&> (2009 Francis Lieber Prize – Lieber Society of the American Society of International Law); and
 - *International Crimes and the ad hoc Tribunals*, (Oxford: Oxford University Press, 2005) (<https://academic.oup.com/book/32623>).
- 3) I am the author of two commentaries of the forthcoming ICRC revised commentaries on Additional Protocols I-II to the 1949 Geneva Conventions;
- 4) I have also published a significant number of academic articles in law reviews (which are listed in my curriculum vitae); most recently, I have published a 69-page article on the history of the notion of war crimes in the International Review of the Red Cross (<https://www.cambridge.org/core/journals/international-review-of-the-red-cross/article/history-of-the-law-of-war-crimes/835F893E8E563F511FBEC967CC2B761D>).

c) Proven experience in dealing with complex criminal cases;

I have dealt with large and complex criminal cases for almost three decades. Among those cases are the following before international(ised) criminal courts and tribunals:

- Prosecutor v. Taçi et al (KSC).
- Prosecutor v. Gucati and Haradinaj (KSC);

- Prosecutor v. Bemba (ICC);
- Protected witness X (ICC);
- Prosecutor v. Ayyash et al (STL);
- Prosecutor v. Halilović (ICTY);
- Prosecutor v. Boškoski et al (ICTY);
- Prosecutor v. Gotovina et al (ICTY);
- Prosecutor v. Bobetko (ICTY);
- In the case of Florence Hartmann (contempt proceedings) (ICTY);
- In the case of Berko Zečević (contempt proceedings) (ICTY);
- Prosecutor v. Mico Stanišić et al (ICTY);
- Prosecutor v. Prlić et al (for General Milivoj Petković) (ICTY);
- Prosecutor v. Bagilishema (ICTR);
- Prosecutor v. Nbirabatware (ICTR);
- Prosecutor v. Khieu Samphan (ECCC);
- Prosecutor v. Kunarac et al (ICTY);
- Prosecutor v. Krnojelac (ICTY);
- Prosecutor v. Vasiljević (ICTY);
- Prosecutor v. Krstić (ICTY);
- Prosecutor v. Milutinović et al (ICTY); and
- Prosecutor v. Slobodan Milošević (ICTY).

I have also been involved as consultant in a number of complex criminal investigations and/or prosecutions of international crimes at the domestic level, including in Bosnia-Herzegovina ('Trusina' case) (State Court of Bosnia-Herzegovina), the United Kingdom (war crimes investigations), Uganda (Thomas Kwoyelo case), Sweden ('Lundin case'), and three cases of international extraditions involving individuals charged with international crimes (involving the United Kingdom, Austria, Switzerland, Bosnia-Herzegovina and Serbia). I have also provided advise to states and state organs in respect of ongoing ICC preliminary investigations and/or investigations.

d) Relevant international experience of the candidate, namely of his/her involvement in the broader field of international justice;

In addition to the above, I have also worked on cases and provided advise in respect of international crimes cases in various countries and continents, including in Europe, Northern and Latin America, Asia, the Middle East, and Africa.

I would also highlight in this context that I have a long experience in cooperating and working with the various organs of international courts and tribunals. Good professional cooperation among different organs and participants in the judicial process is essential to the efficient functioning of the institution and to the good order of proceedings. In my current judicial function, the Panel of which I am a member has been cooperating closely in respect of issues of common relevance with the President of the KSC and with its Registrar. An international(ised) criminal jurisdiction will only ever be as effective as the cooperation that it is able to secure among its principal institutional stakeholders and organs.

I should further mention that, in the process of resolving procedural and scheduling issues, my Panel has demanded that parties and participants (through victims' counsel) should engage in inter partes discussions in order to try to resolve issues before bringing them to the Panel. This has proved very effective in resolving many issues relevant to the case, has significantly lowered the amount of litigation and contributed to a general spirit of cooperation (rather than unnecessary adversariality) between parties and participants.

e) Proven ability to work effectively with diverse and multicultural environment;

I have worked on international crimes cases from a large variety of countries, including these: the former Yugoslavia (including Kosovo, North Macedonia, Bosnia-Herzegovina, Croatia); Colombia; Iraq; Lebanon; Uganda; Rwanda; South Africa; South Sudan/Sweden; Cambodia; Canada. I also worked in other countries (including the United Kingdom) on international crimes cases in which the allegations pertained to crimes allegedly committed outside of those countries.

In these various contexts, I worked for many clients (individuals; states; armed forces; legal entities) and with lawyers and other professionals from different nationalities, cultures, religions and professional backgrounds. For instance, as counsel before international(ised) criminal tribunals, I worked with colleagues from the civil law and common law traditions, including lawyers and other professionals from Bosnia-Herzegovina, Australia, England, Serbia, Croatia, France, Germany, the United States, Belgium, Latvia, Ireland, China, Lebanon, Tunisia, North Macedonia, and Canada.

Similarly, as a Judge at the KSC, I work with colleagues from a variety of countries and legal traditions. In particular, in my current case (*Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi*, KSC-BC-2020-06), members of my Panel are from the United States, Germany and Ireland. The staff that works for my Panel includes nationals from Italy, Romania, Sweden, Slovakia, France, Portugal, the Netherlands, and North Macedonia. The good management of our support team is essential to the effective performance of judicial responsibilities in cases of this nature and complexity.

f) Proven expertise and experience in the specific issues including but not limited to violence, discrimination, sexual assaults, or other similar conduct, inflicted on women and children;

All or most of the cases in which I participated and which are listed above deal with instances of serious 'violence' and 'discrimination'. Specifically on the issue of sexual violence, I was legal officer to the Judges of the ICTY in the case *Prosecutor v. Kunarac et al*, which is one of the first major war crimes case dealing extensively with allegations of sexual and gender-based violence. I also provided expert advice to prosecutors in Uganda and helped prepare the indictment against Thomas Kwoyelo, who was charged and convicted inter alia with offences of a sexual and gender-based nature.

I also dealt with a number of cases of discriminatory violations of human rights as member and Chairperson of the Human Rights Review Panel. See, generally, <https://hrrp.eu/jurisprudence.php>.

g) Proven knowledge of the main provisions of the Rome Statute and of the jurisprudence of the Court;

I have acted as counsel and consultant in a number of cases and situations before the ICC for more than a decade. I was also consultant of the first Registrar of the ICC (Bruno Cathala) during the first plenary of Judges of the ICC.

I was also the principal author of an expert report on the effectiveness of the ICC (2014), which covered various aspects of the structure and functioning of the ICC: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/Ind_Exp_Initiative.pdf.

I have written several scholarly books, which cover certain aspects of the ICC's legal regime and jurisprudence – in particular, the crimes within its jurisdiction and applicable modes of liability.

As a Judge at the KSC, I and my colleagues have relied extensively upon the practice and caselaw of the ICC when drafting our Rules of Procedure and Evidence and in our jurisprudence in respect of a variety of issues, including victims' participation and the redaction regime.

h) Familiarity with the hybrid procedure governing the Court;

I am fully familiar with the hybrid sort of procedure governing the Court. I worked as a legal officer and then as counsel before the ad hoc Tribunals for the former Yugoslavia and Rwanda. Both have in place a hybrid procedural regime comparable in many respects to that of the ICC. I have also worked and practiced at the Special Tribunal for Lebanon and in the Extraordinary Chambers in the Courts of Cambodia in which the system was hybrid in nature.

As a Judge at the KSC, I was extensively involved in the process of drafting the Rules of Procedure and Evidence of that jurisdiction. For the purpose of drafting those Rules, the Plenary of Judges of the KSC found inspiration in the legal regimes of a variety of other courts and tribunals, including the ICC. The KSC's Rules of Procedure and Evidence clearly reflects the influence of these earlier hybrid normative regimes.

As a KSC Judge in two cases, my colleagues and I from Trial Panel II have made regular application of those Rules and have relied upon the jurisprudence of other international(ised) criminal tribunals in dozens of procedural and evidential decisions which we have rendered over the course of the past few years. The fact that Judges of my Panel are from different legal traditions has enabled us to navigate the hybrid procedural and evidential regime applicable before that jurisdiction and identify the practices best suitable for this sort of cases. The jurisprudence of other jurisdictions with hybrid regimes, including the ICC, has helped us identify normative guidance relevant to our own decisions.

As counsel and/or consultant/expert, I also worked in various countries with different legal traditions (including Colombia; Mexico; Bosnia-Herzegovina; Uganda; United Kingdom; Canada; Iraq; Sweden) and had to adapt to legal and procedural systems that were not my own. This has helped me acquire an understanding of certain legal systems that are not my own, and hone an open mind towards different legal and procedural models.

Also our expert report on the effectiveness of the ICC (https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/Ind_Exp_Initiative.pdf) makes references to various aspects of the hybrid procedural regime applicable before the ICC.

I have also acted as counsel, including for ICC State Parties and as consultant in relation to proceedings in that Court. In that context, I was involved in a variety of legal and procedural matters of direct relevance to investigations, preliminary examinations, and proceedings before the ICC, which exposed me yet further to the hybrid legal regime that regulates the work of the Court.

i) Proven knowledge of the organization and functioning of the Court;

As noted above, I was hired as a consultant by the first Registrar of the ICC (Bruno Cathala) during the first plenary of Judges of the ICC, which discussed and decided many issues relevant to the internal workings of the Court.

I was the principal author and editor of an expert report on the effectiveness of the ICC, which resulted in a review of various aspects of the architecture, functioning, and regulatory regime applicable before the ICC. See, again, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/Ind_Exp_Initiative.pdf.

I also acted as counsel and consultant in cases before the ICC, as a result of which I was involved in various aspects of the Court's functioning.

As already noted, I and KSC colleagues conducted careful reviews of the normative regime, practice and functioning of the ICC when drafting our Rules of Procedure and Evidence and have relied upon its jurisprudence since then in respect of a variety of legal, procedural, and evidential matters.

j) Practical skills, including excellent knowledge of and fluency in at least one of the working languages of the Court.

My mother tongue is French and I am perfectly fluent in English, a language in which I have written scholarly books, practiced as counsel in various international criminal courts and tribunals and I am now using English as my working language as a judge of the Kosovo Specialist Chambers.

I am familiar with and have made use of various research and analytical tools used in the field of international criminal justice. For instance, the electronic system for filings and evidence at the KSC is, as the ICC's, based on 'legal workflow'.

2. **Have you ever been investigated for, charged with, or otherwise been the subject of any disciplinary, administrative, civil or criminal proceedings involving allegations of corruption, criminal or administrative negligence, misconduct, including sexual harassment, or any matter calling into question your professional or ethical standing? If yes, please provide full details, including any determinations or outcomes.**

No.

B. Perception of the Court

1. **What is your vision of the International Criminal Court and its dual nature as a court and an international organization? How do you see the main differences between the ICC and the two *ad hoc* Tribunals for the former Yugoslavia and for Rwanda?**

The ICC is and will remain a hybrid between a judicial institution and an international organization, as foreseen by its Statute and as is inevitable in light of its structure and needs.

In my view, one of the main differences between the Court and the *ad hoc* Tribunals is in the balance that is being made between those two structural elements. The *ad hoc* Tribunals were able to rely upon the structure and administration of the United Nations, which in turn served as a buffer of sort between states and the institution. Absent such an intermediate structure, the ICC is much more directly exposed to the demands of states. Also, as a treaty-based court rather than a Chapter VII institution, the ICC does not possess the same instruments of constraints to secure the cooperation of states. These factors have helped the *ad hoc* Tribunals focus primarily and direct the bulk of their institutional effort on the performance of their judicial mandate and to use their Chapter VII authority when necessary. In comparison, the ICC and its organs must spend a great deal more time addressing demands and concerns from its stakeholders and does not possess the same underlying legal authority to perform its judicial functions.

In light of the above, my vision of the ICC is one where the Court reinforces its collegiality and collective spirit as well as the overall effectiveness of the institution. This would create a more trust-based and mature relationship with State Parties, which in turn would enable the Court to focus on developing a stronger judicial culture.

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

The main criticisms that I am aware of in relation to the Court's proceedings include those: (a) perception of lack of universality, selectivity and/or associated perception of 'double standards'; (b) undue length and lack of effectiveness of proceedings; (c) insufficient level of transparency and accountability; (d) lack of consistency, authority, and clarity of jurisprudence.

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?

Greater consistency and clarity of jurisprudence would positively contribute to increasing the credibility and reputation of the Court. I discuss this issue also below in respect of the question of the Court's reliance upon the jurisprudence of other relevant judicial institutions (see, *infra*, C.3). The role of the Appeals Chamber in providing normative guidance and ironing out different approaches between different Chambers is central to such a goal.

Greater efficiency and effectiveness of proceedings and the adoption of internal practices that would contribute to the goal of greater efficiency would also reassure State Parties and other stakeholders that the Court is functioning to the expected level of professionalism and effectiveness. This would also reassure victims of relevance to the work of the ICC, who expect the Court to accelerate the processing of trials, investigations, and preliminary examinations. I note in that regard that the Chambers Practice Manual (amended October 2024: <https://www.icc-cpi.int/sites/default/files/2024-10/2024-10-21-chambers-practice-manual-eng.pdf>) is certainly a step in the right direction.

The Court, its organs, and all Judges should show greater openness and interest for other judicial institutions and should so demonstrate, *inter alia*, by engaging more fully with judges and judicial officials from other jurisdictions, cite to and rely more extensively and transparently on the caselaw of other relevant jurisdictions (domestic and/or international, as the case may be), and adopt a less insular approach to the Court's work and practices.

The Court and its organs should do more to regulate itself/themselves and not pass on to others (in particular, States) the responsibility to do so. The Court and personnel should be exemplary ethically and the disciplinary and ethical regime in force within the Court should be built around such an expectation. Considering the importance of their setting an example on that point, ICC judges could and perhaps should consider the possibility of amending their Code of Ethics to add a mechanism of review and enforcement of complaint in relation to them as was done by the Judges of the KSC (see, in particular Chapter 4: https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-01-rev1_code_of_judicial_ethics.pdf). Internal, Court-led, efforts to make the Court more accountable would also enable State Parties to take a step back from the need to manage certain aspects of the Court's activities.

The Court, in particular, its judicial personnel should also seek to focus more on judicial activities and on the goal of building a strong, common, judicial culture inside the Court.

The Court should also deploy effective outreach efforts that focus on (a) helping to build broader awareness of the work of the Court, and a more candid and realistic narrative on the part of the Court; (b) clarify the institutional vision of the Court; and (c) help build trust into the Court and its representatives. Judges could play a relevant role in that context, in particular by reaching out to other judicial and academic institutions of relevance to 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?**

The recent *Kony* confirmation of charges decision (<https://www.icc-cpi.int/court-record/icc-02/04-01/05-633>) is an important decision as it suggests that the Court has the procedural ability to confirm charges against a suspect in the absence of said suspect where measures to secure his attendance have been unsuccessful. Whether this is a positive or negative advance will depend, in part, on the willingness and ability of the Court to make use of such a procedural possibility not selectively but systematically for all cases that fall into this category.

Similarly, the jurisdictional decision in the Myanmar-Bangladesh situation (<https://www.icc-cpi.int/court-record/icc-roc463-01/18-37> and <https://www.icc-cpi.int/court-record/icc-01/19-27>) whereby the Court held that it can exercise jurisdiction if at least one element of a statutory crime or part of such a crime is committed on the territory of a State Party to the Statute is potentially groundbreaking as it interprets the scope of the Court's jurisdiction as encompassing crimes committed (in part) on the territory of a state that is not a State Party. Again, the relative importance (negative or positive) of this decision depends in part on the ability and willingness of the Court to apply such standard not selectively but systematically. That is because precedents create expectations and standards by which future cases will be measured. A failure to make use of and follow up such 'precedents' could create or contribute to a sense of double standards that would be prejudicial to the overall perception of the Court.

In this context, I would also mention the following decisions which are important, in my view, for different reasons. For instance, the *Al Mahdi* case and the Trial Judgment in that case are important legal signposts in respect of the legal protection of cultural properties. The *Lubanga* stay of proceedings decision was a courageous and standard-setting decision that demonstrated the Court's strong commitment to upholding the fundamental rights of the Accused and reminded all of the importance of the question of disclosure to the fairness of proceedings. The Pre-Trial Chamber's decision in respect of the Court's competence over a withdrawing State Party (the Philippines) and associated appellate decisions provided a valuable insight into the Court's view of its own competence in such a situation. The pre-trial and appeal decisions in *Beina* (ICC-01/14, 12 September 2025; and ICC-01/14 OA, 11 March 2026) are instructive in respect of the notion of complementarity, which regulates the scope of the Court's jurisdiction, and which allowed the Court, in this case, to refrain from exercising its own competence in light of that principle.

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?**

Regarding the first part of the question (relationship to authorities), once elected Judges are and must be entirely independent of the country of origin, and of any other country. While this may not prevent contacts that any citizen has with his or her country of origin, it would demand of the Judge that he/she should refrain from any contact or interaction related to or linked to the exercise of his or her function or that could otherwise cast doubt on his/her impartiality or create an appearance of lack of impartiality. It would be good policy that Judges be required to declare and inform the President of the Court of any meeting with officials of the country concerned in advance of any such meeting.

Regarding the second part of the question (future relationships to past affiliated bodies), Judges should not engage in any additional activity except insofar as this is compatible with independence, impartiality and the demands of their full-time office (ICC, Code of Judicial Ethics, ICC-BD/02-01-05, art. 10). In particular, Judges should not engage in activities that could create an appearance of bias and/or activities that would interfere with the timely completion of judicial work and responsibilities. The approach of the European Court of Human Rights provide useful guidance in this context by demanding that: (a) Judges shall declare any additional activity to the President of the Court; and (b) Requests for leave for judicial or other missions should be submitted to the President of the Court (Resolution on Judicial Ethics, adopted by the Plenary Court on 21 June 2021, amended on 16 December 2024: https://www.echr.coe.int/documents/d/echr/resolution_judicial_ethics_eng; see also KSC, Code of Judicial Ethics for Judges Appointed to the Roster of International Judges of the Kosovo Specialist Chambers, adopted on 14 March 2017 and amended on 24 March 2023, art. 7(1): https://www.scp-ks.org/sites/default/files/public/content/documents/ksc-bd-01-rev1_code_of_judicial_ethics.pdf). A similar practice could and should be put in place at the ICC to ensure that any such request is submitted to and subject to the review for compatibility and authorisation of the President of the Court. Judges should also ensure that any association with third parties – whether linked to past affiliations or not – will not affect their impartiality nor the appearance thereof.

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

I see no objection of principle that would prevent a national of a state to sit in a case pertaining to his or her country of origin. The mere fact of his or her nationality does not create a presumption or appearance of lack of impartiality. I note in that respect that the principle of complementarity, which forms part of the Court's statutory arrangement, expressly foresees the possibility of cases being dealt with by national courts and thus by national judges.

I also note that national judges have been dealing with international crimes committed in their own country or by fellow citizens since at least the Second World War. The prosecutions of Jewish kapos by Israeli courts in the aftermath of the Second World War (e.g., Enigster and Ternek cases), prosecutions of war crimes in Bosnia-Herzegovina related to the Yugoslav conflicts by national courts, as well as prosecutions in Latin America pertaining to crimes of military regimes are among the many examples of such practice. I also note that Lebanese Judges sat as Judges of the Special Tribunal for Lebanon, although the crimes in these cases were terrorism-related rather than core international crimes. In this context, the presence of Lebanese nationals on the bench may

have positively contributed to the perception of a Court anchored into the nation (Lebanon) most immediately concerned by the case and these national Judges are thought to have contributed valuably to the legal, cultural, historical understanding of the case.

I should note, however, that Judges must be independent and impartial and that they, individually and collectively, are the first guardians of these guarantees. As such, any Judge should guard against the possibility that his or her nationality may affect his or her judgment or the perception thereof by a reasonably informed audience. There might therefore be instances where it could be preferable, in order to preserve this perception, that a Judge should recuse him- or her-self or be disqualified to sit in a case to preserve the impartiality (and independence) of the bench and/or the perception thereof. In making that evaluation in a given case, one should also account for the particular sensitivity of cases of the sort heard by the ICC.

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?

While the Statute of the Court and its own jurisprudence should constitute the starting point of any jurisprudential pronouncement before the Court, they will often not constitute the sole or exclusive source of normative guidance relevant to the Court's decisions. Such guidance could come, depending on the issue, from inter alia: (a) historical cases and instruments, which have contributed to the normative shaping of a prohibition contained in the Statute (e.g., the 1949 Geneva and 1899/1907 Hague Conventions in relation to offences listed in Article 8 of the Statute; or Second World War cases in respect of Article 7 crimes); (b) the jurisprudence and practice of other international(ised) tribunals (or other courts, including domestic jurisdictions), in particular those with competence over similar offences or whose procedure/evidential regimes might provide relevant normative guidance and inspiration; (c) human rights courts and bodies where their jurisprudence or practice could provide relevant normative guidance (e.g., in respect of the definition of certain statutory crimes, such as enforced disappearance; or to interpret the statutory guarantees of due process).

At present, there is a perception among some commentators that the Court's interpretation and application of its statutory and procedural regime has been somewhat insular. The Statute does, of course, set the normative parameters within which the Court must and is permitted to function. However, the terms of the Statute were informed by the experience, practice, jurisprudence, and writings of many states, courts, institutions, and scholars. A correct understanding of the terms of the Statute (and the terms of subsidiary instruments applicable before the Court) therefore often demand that the Court should reach beyond the terms of its own Statute and beyond its earlier pronouncements to determine the exact content and meaning of the law.

It is important, in my view, that the Court should approach the performance of its judicial mandate and interpretative function with greater openness to the experience, knowledge and practice of other relevant courts and tribunals, domestic and international. The Court's legitimacy and authority could only be heightened should it demonstrate (a) knowledge and awareness of the caselaw and practice of other jurisdictions, and (b) greater readiness to learn from and inform its decisions with the wisdom of other relevant

jurisdictions. This would help anchor the Court into a universe of courts and jurisprudence much larger than its own.

In respect of issues of due process and the protection of fundamental rights of those concerned by ICC proceedings, the jurisprudence, practice and views of specialized jurisdictions (and other reputable institutions), in particular the ECtHR, IACtHR, and ACtHPR, should feature prominently in the context of the Court's efforts to ensure compliance with relevant standards of international human rights. See also ICC Statute, arts 21(3) and 67. This is important not only to guarantee the credibility of its own jurisprudence and practice but also because the Court's own jurisprudence could then serve as authoritative guidance for other jurisdictions.

Openness to the practice and jurisprudence of other (domestic and international-ised) courts is important for a number of other reasons too. *First*, it will inform the interpretation process, in particular when 'precedents' are being sought as guidance, and avoid distortion of a norm as might result from an interpretation process that fails to account for the history and origin of that norm. *Secondly*, an approach that engages with the jurisprudence of other jurisdictions will limit the risk of fragmentation of the law, which in turn could affect the currency and legitimacy of the rule of law (and jurisprudence of the ICC). *Thirdly*, an approach that accounts for the jurisprudence of other relevant institutions is one that guarantees a greater degree of stability in the jurisprudence of the Court itself. The application of such an approach by the Kosovo Specialist Chambers has enabled it to adopt at once its jurisprudential course without any significant departures across Chambers for the duration of its existence. Such an approach also participates in creating a community of courts that 'speak' to one another. The Court's greater engagement with the jurisprudence of other courts could in turn make other courts more prepared to rely upon the Court's own caselaw. *Lastly*, and more pragmatically, other jurisdictions may have devised solutions to legal, procedural or evidential problems that are not expressly regulated by the normative instruments under which the Court operates. Their experience and decisions can thus become guidance to finding solutions for the Court.

From my own judicial experience at the KSC, I am able to share the following. The Law that regulates the work of my court provides explicitly that in determining the customary international law at the time crimes were committed, Judges may be assisted by sources of international law, including subsidiary sources such as the jurisprudence from the international ad hoc Tribunals, the ICC and other criminal courts (Law No.05/L-053 On Specialist Chambers and Specialist Prosecutor's Office, art. 3(3): https://www.scp-ks.org/sites/default/files/public/05-l-053_a.pdf). The Panel of which I am a member, and the KSC in general, has made generous use of that provision, seeking guidance and authority from the jurisprudence of other courts and tribunals, including the ICC. We have sought, in this context, to inform our own views and decisions with the decisions of earlier courts and only departed from those if and when our legal regime so demanded or where there were solid grounds to depart from it on account of specificities attaching to our cases and circumstances.

I shall note, in this regard, that KSC Judges did not await judicial activities to engage with the practice and jurisprudence of other courts and tribunals. As Judges elected to the KSC Roster, and as part of our first Plenary of Judges, we collectively (19 Judges) adopted our Rules of Procedure and Evidence (211 rules, in total) in three days (covering a wide range

of issues, from disclosure to special investigative measures, from participation of victims in proceedings to admissibility and assessment of evidence). Such expeditiousness and this level of cohesion within a relatively large group of experienced legal practitioners from different legal traditions was only made possible by the fact that we were able to inform our own effort with existing normative regimes in other jurisdictions, and from a body of practice, jurisprudence and experiences in those jurisdictions from which we could draw inspiration. We only departed or added to those regimes when it was assessed that different procedures or mechanisms were necessary to account for some of the specificities of our jurisdiction.

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 regulatory framework of the ICC does not expressly provide for a system of binding precedents from the Appeals Chamber (ICC Statute, art. 21(3) – ‘may apply’). As a matter of good practice (and good sense), however, decisions of the Appeals Chamber should carry particular authority for Trial and Pre-Trial Chambers as well as Single Judges. That is primarily because any of their decisions or orders that would not comply with standards set by the Appeals Chamber would run the risk of being quashed on appeal unless ‘cogent reasons’ exist for the Appeals Chamber to depart from its earlier views.

There is also a strong case to be made in favour of Trial and Pre-Trial Judges (as well as Single Judges) being disciplined in subjecting their own views to those expressed by the Appeals Chamber on any point of law that is relevant to their own decisions. First, such an approach would ensure consistency across Trial and Pre-Trial Chambers and within any of these Chambers across time. It would, also, ensure stability and uniformity of approach and thus provide clear guidance for all those concerned (e.g., counsel, new Judges, etc) who are expected to pay regard to those standards. Such collective discipline would also facilitate and contribute to ensuring cohesion between various members of a trial or pre-trial Chamber, and avoid the risk of fragmentation of views among individual judges.

In this regard, I would draw attention to the decision of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Aleksovski* case, which determined for the purpose of that jurisdiction that decisions of the Appeals Chamber were binding on Trial Chambers of the Tribunal. See *The Prosecutor v. Zlatko Aleksovski*, Case No. IT-95-14/1-A, Decision, 24 March 2000, paras 112-113: <https://www.refworld.org/jurisprudence/caselaw/icty/2000/17044>. That decision contributed significantly to the stabilisation and prompt consolidation of ICTY jurisprudence and uniformisation and systematisation of its judicial practices. It also neutralised to a large extent the risk of confusing and contradicting positions among Trial Chambers. Reasoning similar to that adopted by the ICTY Appeals Chamber in that case could, arguably, apply to the ICC. But even if not, there should be strong, and disciplined, adherence as a matter of practice with appellate jurisprudence among Trial and Pre-Trial Chambers for all reasons outlined above.

Consistent with the above, Judges of the KSC and my Panel in particular have strictly adhered and cited to and at all times sought to comply with and frame our decisions around the pronouncements of the Court of Appeals Panel (and Supreme Court). This has

contributed to ensuring consistency across Trial Panels of the KSC and the development of a small but unified, coherent and rational corpus of jurisprudence within the KSC.

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.

Insofar as such practices are consistent with the applicable legal framework and do not create unfairness or valid claims of unequal treatment among defendants and participating victims, practices that seek to promote efficiency should be encouraged – whether they come from a Single Judge or from a Chamber.

Efforts in that regard could and should also be promoted across Chambers. At the KSC, three Judges (including myself) were tasked before the commencement of proceedings to draw up a ‘Green Paper’ on efficiency that sought to identify ‘best practices’ that could contribute to making proceedings more efficient. Some of these ‘best practices’ were in turn implemented by different Panels of the KSC and across that jurisdiction with a view to ensuring that proceedings were fair but also expeditious and ran effectively. As noted above, the ICC’s Chambers Practice Manual is an encouraging step towards the goals of consistency and effectiveness. It is also an initiative that has the potential of bringing a degree of uniformity to such practices across Chambers.

Consistent with the above, Judges of my Panel also took a number of steps to ensure that proceedings would run smoothly and effectively, including by adopting the following measures and practices: (a) evidence to be used by the Parties and participants in the proceedings were to be made available to the Panel sufficiently in advance of the start of their case to enable Judges to prepare and to take charge of the proceedings; (b) the Panel carefully prepared to hear the evidence of individual witnesses to be called by the Parties (involving, inter alia, the reading of all statements and evidential material relevant to each witness); (c) setting strict time-limits for the presentation of the Parties’ cases and, in some instances, time-limits for the questioning of individual witnesses; (d) regular deliberations all through the proceedings, in particular in respect of assessment of individual witnesses; (e) prohibition of irrelevant lines of questioning; (f) judicial questioning of witnesses; (g) regular hearings with parties in respect of trial management issues; (h) tight control over the schedule and presentation of parties’ case and submissions; (i) extensive use of oral rulings and prompt rendering of oral decisions in many instances; (j) shortening of deadlines for filings when necessary to expedite the disposition of an issue; (k) prompt rendering of decisions; (l) organizing and structuring of blocks of presentation of witnesses and associated procedural matters (including outstanding disclosure or redaction issues); (m) issuance of procedural and evidential guidance, through oral instructions and/or Order on Conduct of Proceedings; and (n) firm judicial management and control of proceedings.

6. How do you envisage working with a hybrid criminal procedure, different from the one you experienced in your national functions? How do you envisage your working relationship with other Judges from different backgrounds and from different legal systems?

I have been practicing or providing advise in legal systems of the civil law and common law traditions, and acted at various jurisdictions that apply a ‘hybrid’ system of procedure,

as is currently the case at the KSC. I come from a legal system of the civil law tradition, but practiced as counsel in (primarily) adversarial regimes. I am now a Judge in a jurisdiction that applies a 'hybrid' sort of procedural and evidential regime that resembles in many respects those of other international(ised) criminal tribunals, including that of the ICC. I am perfectly comfortable in all of these systems.

In a hybrid system that is not the system from which one originates, it is important to keep an open mind to other legal systems, try to learn and understand the mechanics of those systems, be prepared not to insist on one's own habits and traditions, and focus on finding fair and effective solutions to particular legal, procedural, or evidential challenges that also account for the specificities of the judicial environment in which those decisions are made.

As illustration of such an approach I would reiterate that, at the first Plenary of Judges of the KSC, we Judges of that jurisdiction adopted our Rules of Procedure and Evidence, which reflect a hybrid sort of procedural arrangement, in three (3) days. The process by which this was done reflected a collective spirit animated by the will to adopt the most effective and responsive procedural and evidential regime and required all participants (from a variety of legal traditions) to take a step back from their own national systems and a step forward towards the views and experience of colleagues from other legal traditions.

As counsel, I have worked with lawyers from many different parts of the world, and from very different legal traditions. It is the case again today as a Judge of the Kosovo Specialist Chambers. My current Panel is composed, in addition to me, of an American Judge, a German Judge and an Irish Judge. The complementarity of skills, experiences, and backgrounds has been a major asset in the management of the two cases this group of Judges has been involved with before the KSC. Our efforts to work out differences and iron out different legal views that might be tied to our respective backgrounds is reflected in the fact that out of the more than one thousand decisions and orders which we rendered across those two cases, there was only ever one dissenting opinion.

The fact that we all had, in addition to our national and international experiences, a solid understanding of the field of law that is most relevant to our mandate (in particular, international criminal law, international humanitarian law as well as the jurisprudence of other international(ised) criminal tribunals) facilitated and contributed in many instances to creating a common legal and procedural approach among the four of us.

A similar approach and attitude – collective, open-minded, informed by the experience of other legal cultures, and the jurisprudence of other international(ised) criminal tribunals – should be promoted before the Court.

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?

I have been working as part of teams for three decades; teams have typically been composed of men and women from different nationalities and professional backgrounds, depending on the specificities of the case in question (including lawyers; experts; analysts; investigators; case managers). I have managed such teams, on my own or as part of the

leadership/management of a case. Currently, as a Judge of the KSC, my colleagues and I manage a team of approximately ten lawyers and support staff.

Regarding the second and third question, as indicated above, disagreements among Judges are not infrequent, accounting in particular for the different origins and legal backgrounds of those concerned. However, as already noted, members of my Panel have worked hard for the past five years to convince each other and arrive at a consensus that is agreeable to all concerned. As a result, out of the more than 1,000 decisions rendered by my Panel over the past four years, there only ever was one individual opinion issued by a Judge of that Panel.

Personally, I have never made use of the possibility given to me by our Rules (KSC Rules of Procedure and Evidence, Rule 78(2)) of issuing an individual opinion and would only do so if (a) all reasonable measures of convincing colleagues and finding a consensus have been exhausted through deliberations and (b) if the matter in question was of such importance that it warranted the expression of an individual view. In relation to the latter consideration, I would fully account for the fact that the publicized individual opinion of a Judge could create an impression of discord on the bench, not conducive to the sense of unity that should accompany the decision-making process of a court. In sum, the possibility of issuing an individual opinion (concurring, separate or dissenting) should be a carefully weighed last resort that should only be considered after all reasonable avenues of finding a satisfactory consensus have been exhausted through collegial deliberations, and only where strong reasons militate in favor of the expression of such an opinion.

8. Have you considered the risk of being subject to sanctions imposed by one or more States due to the exercise of your judicial functions?

I have considered this risk and have discussed the matter with relevant individuals and stakeholders, including my family, my government, and relevant officials of the ICC who were able to provide useful guidance. In light of this, I have taken all measures within my competence to seek to ensure that any such sanctions, if taken against me, would have the least possible negative effect on my family, on myself, and on other relevant parties.

I should note that negative consequences or threats tied to the performance of my function has been part of my professional life since I started in this field. I do assume that, in light of the stakes and relevant actors involved, such issues will or may arise. They will not and have not prevented me from carrying out my work fully and effectively.

I also consider that the importance of the work being done by the Court is well worth the risks and inconveniences associated with the possibility of sanctions. I have been and remain determined not to let outside influence or threats affect my ability to perform my role independently, impartially and to the best of my ability. I note in this regard the courage and resilience of those within the Court who have continued to carry out their duties despite the imposition of sanctions.

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?**

Absolutely.

- 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?**

I have working in such an environment for the better part of the last three decades and am prepared to continue doing so if elected.

- 3. The Court has two working languages. What is your opinion about this matter? How could multilingual challenges be better addressed by International Criminal Court judges ?**

The Statute foresees that the Court will operate with two working languages, French and English (ICC Statute, art. 50).

I am able to fulfill my duties and perform my responsibilities in both languages. French is my mother tongue; I studied and worked in that language. I have been using English as one of my working languages for almost thirty years. I have acted as counsel in the English language, wrote several books and articles in that language, and exercise my function as a Judge of the KSC in that language too – English being the working language of proceedings in which I am involved as a judge.

Multi-linguism is an important attribute of any international court, criminal or otherwise. This is one of the guarantors of the *inter-national* character of such a court. It is also a way to enable effective communication and understanding between Judges (and staff) from different origins. In that sense, languages are bridges ('passerelles') between nationalities and cultures. They are also important vectors of our individual histories, experiences, and legal traditions. To that extent, mutli-linguism participates in ensuring a diversity of views and experiences that should ensure that various legal traditions are heard and accounted for and that no one culture or language prevails over another.

It is therefore particularly important, in my view, that Judges should be able to communicate effectively in at least one of the working languages of the Court and, ideally, in both. This would ensure, inter alia, that all relevant authorities and information is accessible to them, that there should be openness towards legal cultures not one's own, and that relevant practices and learnings from one of these languages not be ignored for reasons associated with linguistic limitations.

A demonstrated institutional and professional attachment to both working languages of the Court is also important to ensuring the legitimacy of the Court and constitutes an important element of the Court's outreach.

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 magnitude of international criminal cases as well as the significant amount of litigation typically involved in cases of this sort implies and necessitates a degree of delegation of drafting responsibilities to qualified staff. This should be guarded, in my view, by three important safeguards, which I have sought to implement in my work as a Judge: (i) any draft decision should be based upon and reflect the clear, detailed and informed instructions of the Judge(s) responsible for that decision; (ii) if not drafted by a Judge, once a draft prepared by the legal staff is being circulated for review and approval by the Judge(s), there should be meticulous and careful judicial review of the draft, and timely deliberation by the Judges in respect of a draft and/or modifications made thereto; (iii) in respect of matters of particular sensitivity or importance, I have sought to produce the first draft of relevant decisions and/or certain sections of Judgments to ensure that I had personally accounted for all relevant issues, reviewed all relevant evidence or submissions, formed my own view based on those, and prepared myself to discuss my preliminary views with my colleagues and our legal officers. Those drafts are then either further edited by the staff and/or submitted for review and comments by my fellow Judges and legal staff of the Panel. This has contributed, in my experience, to expediting deliberations, helped alleviate some of the burden from the support staff, and enabled effective decision-making among Judges. This requires, however, a clear and fully informed understanding of applicable legal standards and of the records of proceedings.

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

The institution of the Single Judge is one capable of ensuring greater effectiveness and the disposition of certain matters by one judge on behalf of other Judges, and so as to enable those Judges to focus on other work and preparations linked to a case.

The Statute (in particular, arts 39(2)(b)(iii) and 57(2)(b)), the Rules (in particular, Rule 7), and the Court's Regulations (Regulation 47) provide for and regulate the permissible competence of the Single Judge.

The already mentioned Independent Expert Review has drawn attention to the fact that, as foreseen in the Statute and the Rules, Chambers of the Court have been designating a Single Judge for a range of decisions, particularly at the pre-trial stage – in particular, in respect of decisions on requests for redactions; on interim release; decisions severing proceedings; decisions relating to victim participation, including decisions 'establishing principles on the victims' application process', 'procedural rights of victims at the pre-trial stage of the case' and issues concerning common legal representation; decisions on Defence requests for the amendment of the DCC; and arrest warrants. See Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report 30 September 2020, in particular, para 498 (and references cited) and para 654: https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf.

The 'Single Judge' is indeed a useful institution to expedite proceedings and in order to free time for other Judges that the latter can use to perform other preparatory functions in the case. It is also a notable expression of the collegiality of the bench and the trust that Judges place into each other.

The use of such an institution should be promoted, in particular in respect of routine matters, and procedural and preparatory issues that have no bearing upon the merit of the case and do not affect the independence, impartiality, and decision-making authority of the other Judges of the Chamber.

In the performance of his/her function, the Single Judge should ensure adherence to the 'objective preestablished criteria' set out by the delegating Chamber (Rule 7, para. 1) so as to guard against the need for the Chamber to revisit or reverse one of his/her decisions. Also, the Single Judge should ensure that no decision or step taken would affect his/her impartiality or perception thereof (see, e.g., *The Prosecutor v. Gicheru*, Plenary: Public redacted version of "Reasons for the Decision on the 'Request for the Disqualification of Judge Miatta Maria Samba' dated 17 September 2021 (ICC-01/09- 01/20-173-Conf)", 1 November 2021, in particular, para. 30: https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_09853.PDF).

I should note that the KSC has also made effective use of the institutions of 'juge rapporteur/reporting Judge' (KSC Rules, in particular, Rules 17 and 177) to organize the distribution of responsibilities within Panels.

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?

I have been working for almost three decades in jurisdictions and on cases that brought a great deal of pressure (political, personal, and security-related) from states, authorities, and third parties as well as a great deal of public interest.

That experience has prepared me, I feel, for the challenges and pressures which the Court is facing. It is essential in such a context that the bench should be resilient, and made up of individuals who have had to deal with this sort of pressures so that they are prepared to perform their functions despite those, maintain their independence and impartiality in the face of those, and clearly signify that they remain unaffected by attempts to influence their decisions.

As counsel and advisor to states and high-ranking individuals, I have not infrequently witnessed attempts to influence my work. For instance, in one case before the ICTY, I was threatened by State officials in the context of seeking access to sensitive information relevant to the defence of my then client. The international terrorism case before the Special Tribunal for Lebanon pertaining to the assassination of former Lebanese Prime Minister, Rafik Hariri, was widely covered by the media and subject to much commentaries from relevant political actors. Similarly, the trial of President Hashim Thaçi in which I am currently involved is drawing a great deal of political and media attention. I was also (appeal) counsel for Ante Gotovina before the ICTY, another case which again drew in significant interest from various states and entities, and attention from the media and other third parties.

I have also provided advise to several states in the context of domestic and/or international proceedings where pressure from within those states or from external actors was significant.

7. Are you in a health condition allowing you to work under pressure, given the Court's heavy workload?

I am in excellent general health and I have been working for the past three decades in a high-pressure judicial environment. I am fully prepared to continue doing so at the ICC if elected.

E. Deontology

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

In this context, judicial independence is to be understood as requiring and implying that a Judge should be free from any undue influence from outside the judiciary, and from within. It implies, in particular, (a) independence from outside political and/or personal pressure; (b) preparedness to apply the law uniformly, irrespective of the individual, state or context to which it must apply; (c) professional competence and ability to do so and not to surrender that competence to anyone else, from within or outside the court; (d) being fully informed of all aspects relevant to a judicial decision and performance of judicial function in full awareness of all relevant legal and factual matters validly and properly within the scope of the decision-making process.

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

Any act, conduct, statement or situation created that could reasonably be perceived as calling into question the impartiality or independence of the Judge in the mind of a reasonable and informed observer.

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?

The Statute sets out the conditions for eligibility of judicial candidates (ICC Statute, art. 36). In particular, art. 36(8)(a) provides that States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for: (i) The representation of the principal legal systems of the world; (ii) Equitable geographical representation; and (iii) A fair representation of female and male judges. To that extent, the Statute highlights the importance of the fact that the composition of the bench should reflect the international character of the Court, its universal ambition, and the fact that the ICC system should reflect the wealth of different legal cultures and traditions. Insofar as the perception exists that the ICC (and international criminal tribunals more generally) leans too heavily on one or a limited number of legal traditions, it is important that (a) the selection of Judges and (b) each elected Judge should account for the need to ensure a diversity of legal traditions and approaches in the exercise of their mandate.

I would qualify the above with the following. *First*, no such criteria should be applied in a discriminatory manner so as to result in excluding any candidate based on consideration of race, color, gender or religion. *Secondly*, candidates should demonstrate an openness to the legal systems and traditions of others. Judicial decision-making in an international criminal jurisdiction involves and requires the ability to understand the different

approaches and points of view of colleagues from different legal traditions and the ability to build bridges towards a common solution. As an illustration, I would again mention that the bench of the Kosovo Specialist Chambers to which I belong is composed of four Judges of different nationalities (American; German; Swiss; and Irish). Over the course of five years, having rendered more than 1,000 decisions, there only ever was one single individual opinion issued by a Judge of that Panel. This is a clear indication of the efforts being deployed among colleagues to try to convince each other and to find solutions that are acceptable to all without undermining the integrity of the decision. *Thirdly*, it is essential to the coherence of the corpus of jurisprudence that there should be a common acceptance among Judges that there is value to ensuring the consistency and stability of the jurisprudence, so that individual views or changes in composition of the bench do not result in regular changes in the approach of the Court. *Lastly*, any Judge should be expected to be aware of the relevant, existing, legacy of practices, jurisprudence and authorities that are relevant to the decision-making process. One's world view cannot be restricted to what is already known when joining a new legal order or jurisdiction. The field of international criminal law and international criminal justice has existed for decades, if not longer, so that there should be an expectation that any Judge would know enough about that legacy to ensure general coherence and consistency in judicial decisions, avoid distortions resulting from unawareness of this legacy, and prevent a state of constant changes and uncertainties in the interpretation and application of the law.

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

Effective participation of victims is central to the Court's credibility, legitimacy, and fact-finding responsibilities. See, e.g., G. Mettraux et al., Expert Initiative on Promoting Effectiveness at the International Criminal Court, pp 175ff ('Victim's Participation before the ICC') (https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/Ind_Exp_Initiative.pdf).

Effectiveness of victims participation depends on a number of factors, which include these: (a) a clearly defined framework setting out the permissible scope of their involvement in the proceedings; (b) effective representation; (c) adequate resources; (d) protection from harm. In order to effectuate these, various decisions and measures were taken at the KSC and in the *Thaçi et al.* case in particular (in which more than 150 victims participated), which could be replicated by the ICC or inspire efforts of a similar nature at the Court:

- (a) My Panel (Chamber) issued an Order on the Conduct of Proceedings at the very beginning of the trial process, which provided clear guidance to the Parties and participants regarding, inter alia, what the Panel understood and authorised to be the scope of involvement of participating victims (see, again, *The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi*, KSC-BC-2020-06, Order on the Conduct of Proceedings, Annex 1, 25 January 2023: <https://repository.scp-ks.org/LW/Published/Filing/0b1ec6e980df5b83/Annex%201%20to%20Order%20on%20the%20Conduct%20of%20Proceedings.pdf>), paras 32-36. This clear and timely judicial guidance enabled counsel for victims *and* the Parties in the proceedings to prepare in light of our ruling and kept the amount of litigation between parties and participants to a very low level. In addition, counsel representing victims was required to seek leave to question witnesses called by

the Parties and to provide sufficient indications of the areas and relevance of proposed questioning so that the Panel could regulate the scope and pertinence of questioning and issues to which this was permissible;

- (b) There was a competitive process to select a fully qualified and experienced counsel to represent victims in these proceedings, which ensured fully independent, effective, and professional representation of victims' interests; counsel's experience and professionalism also facilitated good communication between him and representatives of the Prosecutor and Defence and thus, again, helped limit litigations in the proceedings; agreed upon solutions among Parties and participants were generally put forward, which the Panel was generally content to approve;
- (c) Significant resources were allocated to victims' representatives in order to ensure that the team representing victims was adequately manned and that they had at their disposal all necessary resources to guarantee the effective fulfillment of their mandate (including in respect of the possibility of retaining qualified experts and conducting necessary investigations);
- (d) Strict measures were ordered by the Panel to ensure the safety and security of participating victims; this was done, however, in such a way as to guarantee that such measures would be consistent with the fundamental rights of the accused.

I also take note of the recent Reparations Order, issued by Trial Chamber X of the ICC in the case of Al Hassan (ICC-01/12-01/18-2782, 28 avril 2026), which provides for an innovative and, in my view, effective manner of providing for reparation, in particular in respect of the 'collective' aspects of this Order.

The increased involvement of the Trust Fund in reparation measures unrelated to judicial findings should also be welcomed and promoted as a strategy capable of ensuring the greatest possible reach of reparatory measures linked to the work of the Court and Trust Fund. This also provides for the possibility of faster measures of reparation untied to lengthy judicial proceedings.

Lastly, I would mention that all measures taken to ensure more effective and more expeditious proceedings are themselves likely and capable of contributing to rendering victims' participation more significant and more effective. The shortening of cases and multiplication of cases that would be associated to more focused, more effective, and more expeditious proceedings would all contribute to freeing resources and personnel that could in turn devote their time to investigating, prosecuting and adjudicating additional cases and thus reach larger communities of victims who are hoping to see their case come to the Court.

5. 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?

As a preliminary matter, I would underline the facts that the rights of the accused and those of victims are not per se inconsistent. Many legal systems, in particular those of the civil law tradition, have extensive experience in accommodating these two sets of rights in a single judicial process. So have a number of international(ised) criminal jurisdictions.

As far as the ICC is concerned, art. 64(2) of the Statute provides 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. Article 68 (in particular, paras. 1, 3 and 5) makes it clear that measures decided to ensure the protection and participation of victims in proceedings shall not be prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.

Consistent with the ICC jurisprudence (see, e.g., *Prosecutor v. Lubanga*, Judgment on the appeal of the Prosecutor against the decision of Trial Chamber I of 8 July 2010 entitled "Decision on the Prosecution's Urgent Request for Variation of the Time-Limit to Disclose the Identity of Intermediary 143 or Alternatively to Stay, ICC-01/04-01/06-2582, 13 October 2010, in particular, para. 50) and the practice of other international(ised) criminal jurisdictions with a similar normative arrangement (see, e.g., KSC Rules of Procedure and Evidence, Rule 141(1) and associated jurisprudence), this must mean that, where relevant, (a) a Chamber or Judge should account for and seek to accommodate, give effect and ensure the effectiveness of the rights of both the accused and participating victims whenever relevant to a decision, and that (b) in that equation, the rights and entitlements of participating victims shall not be interpreted or applied in a way that would be prejudicial to or inconsistent with the rights of the accused and to a fair and impartial process.

In addressing the relationship between rights of the accused and rights of victims, a number of factors are thought to be of particular relevance. *First*, as noted above, there should be no assumption that these rights cannot co-exist and, instead, they should both be given the greatest possible relevance to the proceedings. *Secondly*, participating victims should not be permitted to act as second prosecutors. The responsibility to prosecute and to establish the guilt of the accused is exclusively with the Office of the Prosecutor. It is the responsibility of the bench to be the guardian of this division of labor. *Thirdly*, in order to ensure the good order of proceedings, it is sound practice for the bench to seek to lay out the general principles that it intends to apply in the regulation of that relationship in order to avoid or pre-empt potential points of friction between participating victims and Defence and limit the amount of litigation that could otherwise result from such frictions. Trial Panel II of the KSC of which I am a member thus issued an 'Order on the Conduct of Proceedings' prior to the commencement of trial that sought, inter alia, to regulate the role and responsibilities of participating victims in light of their role and in compliance with the fundamental right of the accused to a fair trial. See, again, *The Prosecutor v. Hashim Thaçi, Kadri Veseli, Rexhep Selimi, and Jakup Krasniqi*, KSC-BC-2020-06, Order on the Conduct of Proceedings, Annex 1, 25 January 2023: <https://repository.scp-ks.org/LW/Published/Filing/0b1ec6e980df5b83/Annex%201%20to%20Order%20on%20the%20Conduct%20of%20Proceedings.pdf>), paras 32-36.

**6. How do you see possibilities and limits of use of AI in the work of the Court?
Do you have any experience in using AI in your work?**

I have limited personal experience in the use of AI in a professional context. I am aware, however, of the potentialities of AI in that context and have acquainted myself with the work of the ICC OTP in that regard: <https://www.icc-cpi.int/sites/default/files/2025-12/2025-cyber-eng.pdf>, in particular paras 30ff.

AI could create risks to the integrity of the judicial process, in particular in respect of the creation of inauthentic evidence. Careful judicial monitoring of this possibility will be critically important to addressing such risk. Among the safeguards that are available and should be applied in response to such risks are: an informed application of rules on admission of evidence; a careful and meticulous fact-finding process; and openness to relevant expertise and technologies.

AI could also provide relevant assistance in the judicial context, in particular as an analytical tool. However, the fact-finding process should remain the exclusive preserve and responsibility of the Judge(s). The presence and possible use of AI should also alert Judges to the particular importance of a careful and searching evaluation of the evidence – both for purpose of admissibility and later evaluation.

Also, and for completeness, I would mention that I have been writing a compendium of international crimes that is being published by Oxford University Press. Volume 1 (genocide: <https://global.oup.com/academic/product/international-crimes-law-and-practice-volume-i-genocide-9780198843115?cc=us&lang=en>) and Volume 2 (Crimes against humanity: <https://academic.oup.com/oxford-law-pro/book/57765>). Volume 3 (war crimes), which is being written, will deal, inter alia, with the commission of war crimes involving AI-generated instruments.

F. Additional information

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

I also have French nationality (from my mother side).

- 2. 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?**

I have familiarized myself with the conditions of service and am fully aware and accept the terms and conditions of work.

- 3. 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?

I believe that there is value in making the process of selection of ICC Judges as transparent as possible. In that light, I would agree to and favour the present form being made public.

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