ADVISORY COMMITTEE ON NOMINATIONS OF JUDGES

Belgium's CANDIDATE: Laurence Massart

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?

Chosen list: A (criminal law and procedure and experience in criminal proceedings)

Experience as a judge:

I have been a judge for over twenty years and have been assigned to the criminal division at all levels of the justice system and in various courts around the country. My successive seniors have entrusted me with the management of large-scale trials with an international dimension. I have acquired a thorough grasp of criminal procedure over the past twenty years. I continue to practise today. Examples of trials include numerous criminal (assises) court sessions I presided over, which dealt with the most serious crimes, including the assassination and murder of women, children and men and also inhuman treatment and torture, including against minors. I presided over the terrorism trial known as the "Belgian Jewish museum", the trial involving the assassination of the President of the League for Albanian Human Rights in Kosovo in the context of the war in the former Yugoslavia (case file referred to Belgium by Ms Carla Del Ponte) and many others besides. I was also the trial judge in Belgium's first application of universal jurisdiction involving genocide in Rwanda, the so-called "Trial of the Butare Four".

In parallel, for fifteen years I specialised in the law of international financial crime. Crimes of a certain degree of severity require structure and advance funding in order to be perpetrated. This specialisation is therefore connected to the skills required by the International Criminal Court. I dealt with important trials on an international scale which involved numerous natural and legal persons involved in international financing arrangements with shell companies, nominees, guarantees, covert financing of arms trafficking on an international scale, terrorism, illegal repatriation of profits, laundering of money from illegal trade in various international channels [...].

I also presided over numerous trials involving the assault, rape and sexual exploitation of women and children (so-called morality trials), including gang rapes, in which there was so much at stake that we were subject to threats and the criminal registry was set alight. I have also been involved in trials involving large numbers of victims and also organised crime, including terrorism, disasters (Ghislenghien case) [...].

Experience as President of the Brussels Court of Appeal:

I manage Belgium's largest court of Appeal in terms of numbers of people. I organise the work, inter alia, of the criminal chambers of the Brussels Court of Appeal and the criminal courts of Brussels and Walloon Brabant which will soon - perhaps - hear the trial of the Brussels terrorist attacks. I manage the only Belgian appeal court made up of two linguistic roles, two cultures which are at the border between northern Europe (Dutch-speaking Belgians) and southern Europe (French-speaking Belgians) and I work as part of multi-disciplinary and multi-cultural teams on a daily basis. As a result, I am skilled at listening, understanding different cultures, mediation, arbitration, sharing ideas and values. I can deal with stress and media pressure.

Additional experience

I am an honorary lawyer, having practised for 8 years, and I worked for almost two years in the Charleroi public prosecutor's office. I am therefore familiar with the challenges frequently encountered by the parties to proceedings. I train presidents of criminal courts on the specific points of questioning the accused, hearing experts and witnesses, the discretionary power of the president and directing arguments. I am also involved in training criminal police officers for their investigations and their testimony in court, and also training investigating magistrates concerning their case files involving violent crimes which fall within the jurisdiction of the criminal court. I meet many colleagues and stakeholders in my role as president and I take part in comparative studies on a regular basis.

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

As a judge: see point A.1;
As a lawyer in general: I was a volunteer lawyer with non-profit making organisation Infor famille, which supports women in distress, and a legal expert on international adoption at the Higher council for adoption.

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

- Main criticisms from certain States:

Some States accuse the International Criminal Court of focusing (having focused) its judicial activities mainly on one continent and of avoiding debates which might offend the sensibilities of "powerful" States. Other States allegedly use the ICC to consolidate an accession to power by handing over their opponents whilst at the same time adopting a similar conduct. Some States are losing confidence in the ICC's independence in relation to their nationals whilst others may threaten to withdraw from the Rome Statute if one of their nationals is prosecuted, or take retaliatory measures against ICC members and its operation, which largely depends on support for the process and cooperation by the States. The ICC reportedly no longer has (or has very

little) legitimacy.

Main criticisms from those who examine its conduct:

It is claimed that the voluntarism sought by the founding fathers of the Rome Statute prevents the ICC from having a universal vocation which is the only way to ensure that it has a permanent role on the international judicial stage. The complementary competence of the ICC allegedly plays a part in its reluctance to take on delicate situations. The option for the Security Council to block proceedings for a 12-month period, which may be extended indefinitely, is reportedly a major obstacle to the ICC's independence. More specifically, the judicial process as a whole is said to take too long whilst the grounds for decisions are too long and unclear.

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

It is common knowledge that the International Criminal Court and the States Parties are concerned about the external perception of the Court. A committee of experts has been set up under the aegis of the States Parties tasked with proposing improvements to the way the Court operates (resolution of 6 December 2019 ICC/ASP/18/Res.7). The committee has been divided into sub-working groups. A confidential interim report was expected in June 2020 and a final public report is expected in September 2020. For their part, the ICC judges took part in a retreat lasting several days in autumn 2019 to examine the same issue. This resulted in a Chambers practice manual dated 29 November 2019 which recommends, inter alia, greater expediency in dealing with case files. Finally, for its part the Office of the Prosecutor has presented a 2019-2021 Strategic Plan to learn lessons from the outcome of its investigations and to draw out various solutions to the poor output of its departments, including the prosecution of persons of "lesser importance".

The enthusiasm generated by the creation of an international criminal court has waned. Now it is necessary to ensure that the achievement is sustainable over time, to ensure its legitimacy and anchor it - even shore it up on paper - at a time when threats against it collide with large-scale and inescapable popular support from a political and diplomatic point of view.

Beyond declarations and changes to texts, only those who are involved in an institution on a daily basis can improve its internal workings. However, since I manage a court of appeal on a daily basis, allow me to put forward some views inspired by reading the ICC's texts and decisions.

Point D of this questionnaire reveals that the issue of workload is crucial for the ICC. Although a judge's workforce is undoubtedly a crucial aspect for a court to run smoothly, the question is to establish whether this is not a question of not being able to see the wood for the trees. If we start with the premise that the weak output is due to legal professionals not working hard enough, we immediately dispense with examining other causes, which are perhaps more deeply-rooted, for this lack of efficiency. What does this young court actually need? A workforce, undoubtedly, but also... To succeed an objective tool is required: figures.

More concretely, the international community only considers the Court's figures, which can be counted on the fingers of two hands. If we are not to fall into the trap of claiming that the weak output of a court demonstrates that it has achieved its aim - to eradicate crime - we must go further and isolate modules from the point of view of figures.

- Input of case files: is the number of incoming cases acceptable in light of the atrocities committed around the world? There are three potential avenues to be worked on: information and/or education about international criminal justice; expanding the number of people who can refer cases to the court (see E.6 below); and the liability threshold for persons we want to prosecute. In this regard, the Office of the Prosecutor's Strategic Plan 2019-2021 intends to expand the number of cases it brings by tracking down "bit players".
- Output of case files: is the ICC's lack of work the cause of low output or is it not possible to close files for other reasons? This is an important question because if the heart of the matter lies in the fact that the ICC finds it impossible or very difficult to close cases then opening up to a broader range of people will only increase the problem and further tarnish its image.
- The ICC's two phases of work:
    - Investigation phase: It is important to distinguish between delays which have an external cause (problems encountered in the field or lack of cooperation from certain States) and those which have an internal cause (malfunctions/improvements required at the Court);
    - Trial phase: It would be useful to draw up a costed comparison between the number of cases that are stuck at the investigation phase and those which reach the trial stage to then identify the reasons for the imbalance and establish the precise timing of the trial phase to spot the actual phase(s) where the case file accrues delay.

Once the costed phase is complete, here are a few suggestions for improvement:
For the investigation phase: Improvements require greater responsiveness and "consolidation" of the fragmented provisions enshrined in the Rome Statute for this phase. This would require discussions to focus on what is essential, to focus arguments on the points to be settled, to require rigorous, clear and concise observations and to provide for frameworks - which can be adapted to the case at hand - based on the experience already acquired during the past 18 years of work. Decisions are often lengthy and confuse the message. The priority is still the investigation which cannot be hampered by judicial steps that are too long. At the final stage of the settlement of the proceedings, the aim is not to examine evidence but rather to determine whether evidence of guilt has been converted into charges that are sufficient to commence a trial. Yet the grounds for decisions often involve a more or less identical examination as for the evidence. Although the examination does not bind the trial court, it takes up a considerable amount of time for the judges of the pre-trial chambers. The principle of a chamber with a single judge, enacted in article 57 of the Rome Statute, could be applied strictly, apart from legal exceptions and appeals involving the unification of the law (see point C4);

For the trial phase: it must not, however, succumb to the siren call of expeditiousness. This is the ICC's raison d'être. It is the focus of attention and must include time for preparation, hearings, consideration, examination and drafting. This is what I call the "judge's time". The accused, the victims and the international community, represented by the Prosecutor, need to know that a trial judge moves through these various stages and that this takes time. The grounds for a decision must be provided as soon as it is rendered. Subsequent chaotic grounds disturb the image of calm and determined justice. In addition, it is essential to try fugitives in absentia. A priori there are no provisions to prohibit this. The Court will need to be creative to organise potential proceedings to have a judgment in absentia set aside, which is something which is not provided for in the Rome Statute. I am in favour of maintaining collegiality in view of the significance of the proceedings dealt with, the major challenges involved and the absence of any reliable study regarding the actual time saved at this stage in the proceedings. In addition, the unification of the law at this stage is essential (see point C4). I am of the view that colleagues who took part in the debates should sign the decision. The custom of allowing a judge not to sign gives the image of a team which is at best cavalier in terms of its responsibilities and at worst a dissolute team of judges when an important decision is involved (see the decision of the Pre-Trial Chamber of 5 April 2019 in the *Gaddafi* case);

- From a general point of view: I would avoid multiple regulations which add to the judges' workload since they must apply them, and which risk causing confusion and even contradictions and which do not always bring any added value to the initial text. However, drafting a compendium of all legal matters which have been settled over the past 18 years for the judges would save precious time in future. This might form the basis for the initial codification of international criminal law which is a way of making the International Criminal Court sustainable (see the History of the League of Nations and of the ILC in this regard). Finally, the world is changing and numerous other crimes against humanity are being examined, such as ecocide [...]. The ICC cannot relax its interest in new forms of serious crimes against humanity otherwise its role risks being diluted amid a mass of competing courts. And in fulfilling this dream, the universality of its jurisdiction might be recognised.

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

As a veteran judge of numerous trials, some of which have attracted significant media interest, I often tell my jurors and the colleagues I train that a judge must not comment on a decision which the public, the parties and journalists are waiting for […] but that he or she must shoulder his or her responsibilities with courage, skill, professionalism and humanity. Thinking too much about what is expected of him or her affects the fairness of his or her reasoning and leads him or her to decisions that are weak in both fact and law. Beyond these considerations, here are a few landmark decisions, from a subjective point of view of course.

Firstly, I would mention the first symbolic decisions of the ICC, a young court: the first investigation initiated into the crime of genocide, even though it was the result of a referral by the Security Council on the basis of article 13(b) of the Rome Statute (resolution 1593 of the Security Council of 31 March 2005, Darfur-Sudan); the first conviction for war crimes (*Thomas Lubanga* case) and the first conviction for sexual violence in the Democratic Republic of the Congo (decision rendered by Trial Chamber VI on 8 July 2019 in the *Ntaganda* case). The loud and clear assertion that trials must be fair and that a systematic refusal to disclose all exculpatory documents is evidence of the violation of this principle (*Lubanga* case, even though the Appeals Chamber amended this Trial Chamber decision on other grounds). There were other firsts: all of them are symbolic and thus important in my view.

From a more specific point of view, the Appeals Chamber decision of 6 May 2019 (in the *Omar Al Bashir* case) which stated that there is no immunity for a head of state under customary international law in the event of arrest, pursuant to article 27 of the Rome Statute, is also important even if it is redundant, given the clarity of this article and the fact that this rule has been applied since the time of the Nuremberg International Military Tribunal. This is a ground which is still invoked today by heads of state (and by States) who believe that they can evade (or help heads of state evade) the humiliation of international justice.

The decision by the Pre-Trial Chamber of 6 September 2018, which recognised the jurisdiction of the Court even though the facts occurred on the territory of a State which is not a party to the Rome Statute (Burma) against the Rohingyas but the consequences of which reverberate on the territory of a State Party (Bangladesh), which they were driven towards, shows the creativity the Court is capable of in order to pursue its work in accordance with the texts.

Some would cite the decision of the Appeals Chamber of 5 March 2020 in the so-called "Afghanistan" case, which authorised the Prosecutor to open an investigation. This is clearly a landmark decision since it asserts the determination to apply the Rome Statute without compromise and equally to all by reiterating the precision of article 15(4) of the Rome Statute which clearly sets out the conditions for opening an investigation including the interests of Justice factor, which should not be confused with the interests of the victims or of the Court. It also settled an interesting question regarding the application of article 3 in the event of a war crime during a non-international armed conflict by authorising investigations on the territory of other States Parties where a criminal act was allegedly committed or a victim allegedly captured.

As for the negative impact, generally this is due to the length of the decisions. And if I were to note a use which I am not familiar with and which confuses the message somewhat, I would mention decisions which are rendered "orally" with subsequent brief grounds and more detailed grounds which may or may not be drafted at a later date. I do not know how this message was received by the public or the States Parties, but it suggests numerous prevarications which are completely irrelevant for the reader. (Case of *Laurent Gbagbo & Charles Blé Goudé*, oral decision of 15 January 2019, written decision 16 July 2019; announcement of a decision with further grounds).

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?

This is in fact the "ivory tower" issue. With regard to an upcoming case, a current case or a closed case, a judge communicates with no-one, apart from colleagues. During the pre-trial phase, a judge must, however, collaborate via the Registry with the competent public authorities for the requirements of the investigation, in accordance with the texts.

However, there is nothing to prevent a judge from participating in knowledge-sharing in a university context or with national or international judges/prosecutors. He or she will then refrain from commenting on decisions with which he or she was involved, although he or she can mention their existence. Scientific debates provide a rich environment and ensure that the quality of the work of all those involved is improved. Participation in meetings with non-governmental organisations and the authorities is more delicate. Context and objectives are the key points here. It is obviously unacceptable for a judge to be given any sort of external "instruction" on this occasion.

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

Please see points E1 and E3.

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?

All of them and none of them.

None of them as a matter of principle because the ICC must stand on its own. It is. There is therefore no jurisprudence, decisions by national or international courts and even less so from bodies that it needs to consider.

Having said that, the ICC cannot isolate itself and it has links. Thus, for example, the Rome Statute sets out in articles 55, 66 and 67 a series of rights which are recognised, inter alia, by the European Convention for the Protection of Human Rights and Fundamental Freedoms, with legal penalties for breaches applied by the European Court of Human Rights. In addition, since the Nuremberg International Military Tribunal was established, numerous ad hoc international tribunals have been faced with procedural and substantive issues in international criminal law. International courts were established, including the International Court of Justice, which were sometimes forced to debate similar situations (see Gambia's application for interim measures in the situation involving the Rohingyas). An ICC judge cannot therefore ignore these "productions" which, without being binding upon it, are a source of inspiration and lend coherence to the international construction as a whole. The case law of the national courts cannot achieve the desired coherence since the judicial systems and practices very so much. However, they can fuel discussions (see points C5 and E6 and 7).

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 Appeals Chamber lends coherence to the system and guarantees legal certainty. It should play the role of both an Appeals Court - which reviews cases in fact and in law - and a Court of Cassation, which rules on points of law separate from the facts. Thus, decisions on matters of law should be a model for the judges of the Pre-Trial Chambers and Trial Chambers.

The principle of the independence of the judges of the Pre-Trial and Trial Chambers tempers this link. They are still free to assess the facts which have been referred to them and can, on matters of law, take decisions contrary to the Appeals Chamber when they consider that a change in the jurisprudence of the Appeals Chamber is desirable. They can also be creative when there are gaps in the law.

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.

The answer is definitely yes.

I cannot give examples which could be immediately applied to the International Criminal Court since I do not - yet - work there and my view that it is necessary to experience things to become familiar with them before having an ambition to change them. But I can give you numerous examples of innovations I have introduced in my own court:

- A monthly hearing for initial directions in criminal matters, not provided for in the Criminal Investigation Code;
- The progress of the appeal case file, from the trial until the hearing for initial directions on appeal to ensure greater efficiency;
- Scanning case files - despite the paucity of our IT equipment - before the investigation chambers to ensure that the original case file is available to the investigating judge at all times who can continue his or her investigation work without interruption;
- Creating a mediation pool within the civil chambers;
- Welcoming defendants and re-allocating court rooms;
- Introducing meetings for each section;
- Organising a colloquium of the Brussels Appeals Court;

- Drafting a series of frameworks for the repetitive tasks of a judge without wanting to interfere in the judicial role whilst ensuring greater efficiency for the work, without judges being forced to use them;
- rationalising the premises by grouping together judges and registrars in pools of skills to improve communication between the different members of the judicial system;
- etc.

I am aware that it is not possible to transpose all these innovations to the ICC but I am sure that with a little practice, it would possible to introduce practical and legal innovations from a procedural point of view. Small effective and specific steps need to be taken.

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

- Teamwork

I have always worked as part of a team. I worked as part of a team in my capacity as a judge in collegial chambers, with colleagues, jurors, registrars and court staff. In my capacity as President of the Brussels Court of Appeal, I have continued to work in a team. As soon as I was appointed to head the Court of Appeal, I divided the Court into four divisions depending on the cases heard (criminal, civil, family/youth, contracts court) and I established so-called "operational committee" meetings for each division. Each operational committee consists of two judges (one French-speaking judge and one Dutch-speaking judge), a chief registrar, a registrar nominated by the chief registrar and myself. This is an unusual make-up for the committee as it deliberately combines all the professions which are involved in the justice system, We discuss all subjects which are of interest to the division (law, proceedings, the organisation, finance, internal and external projects, human resources issues which may arise, etc.). The projects are initiated in these committees and are then implemented on the ground. I supervise their implementation on a day-to-day basis and provide feedback at the next meeting. Alongside these operational committees there is the Court's management committee which consists of three judges, the chief registrar, a registrar nominated by the chief registrar and myself. This committee has a legal existence but the seniors decide on its make-up. I immediately included all the professions within the Court. A more authoritarian management style would obviously have been easier for me but inclusive management in teams is highly enriching. It builds bridges and forces one to constantly challenge oneself on all the subjects which are of interest to a judge. I also revived the judiciary/bar commission which enables me to stay in touch with counsel, to understand their problems and find solutions together whilst respecting one another's points of view. There is also constant dialogue with the Public Prosecutor's Office.

- The different backgrounds of the judges

The Brussels Court of Appeal is the last remaining court in Belgium to combine two cultures of judges. Brussels is at the border between northern and southern Europe. We need to work together whilst respecting one another's differences because language and culture forge a way of thinking, writing and decision-making. I include these differences to benefit from their richness whilst preserving their characteristics. Wanting to impose one's own style can only hinder relations and make it impossible to work together. You have to respect others and demand that they respect you. Within this limited framework, any exchange is a bonus for the organisation, discussions and the final decision.

- Disagreements between judges

  It is normal for disagreements to crop up as judges are deliberating. I would even say that it is healthy to exchange different points of view. It is the *raison d'être* for collegial chambers. A disagreement on a point of law or on an assessment of the facts does not mean that there is conflict. However, the majority view prevails and you have to be able to accept to sign a decision with which you do not agree. This is part of a lengthy learning process when you become a judge. It requires humility, like any other human endeavour. People who work alone may find it difficult to accept that they are not right. Sensitivity and narcissism must be set aside in favour of humility and respect. Nobody is all-knowing.

- The drafting of separate concurring and dissenting opinions

  I am not really in favour of this. Not because I am not familiar with this custom but because it must be time-consuming and I fail to see its relevance. If it is a concurring opinion, the arguments can be incorporated into the grounds of the decision without needing to add a redundant text. If it is a dissenting opinion, it does not carry the decision. It is for the trial judge who does not share the views of the appeal decision to adopt a different position on a different case to prompt a fresh appeal and a fresh appeal decision which will either be the same as the first or not.

  I would add that the Court requires all its human resources to deal with its workload. Does a judge's role involve becoming the author of doctrine in the case he or she is dealing with? Obviously, I am happy to be persuaded of the relevance, contribution and usefulness of separate concurring or dissenting opinions as part of an open discussion in this regard and I am prepared to change my view.

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

I would like to refer to article 41 of the Rome Statute, informed by rule 34 of the Rules of Procedure and Evidence. It mainly concerns involvement in any capacity in the case the judge will be required to rule upon. This is obvious. The other cases have to do with personal interest, involvement in legal proceedings which involves the person being tried before the ICC, and the fact of having a prior opinion which would hinder the impartiality of the judge.

Rule 34(d) of the Rules of Procedure and Evidence refers to doctrinal opinions which could conflict with the impartiality of the judge. The question of judges being professors, assistants or contributors at universities or authors of doctrine is one which is regularly raised internally. When a judge writes a paper on a subject, he or she is adopting a theoretical position on an issue. Can he or she, whilst demonstrating a clear mastery of the subject in his or her writings, along with his or her personal opinion, rule on a case where such a matter would be at the heart of the debates, creating an illusion of contradiction for the parties even though it is feigned? In Belgium, the response by the Court of Cassation is clearly in the affirmative, contrary to the Rules of Procedure and Evidence. For my part, I have always been extremely careful in terms of adopting a certain view when addressing colloquia. I always leave room for doubt, whilst still talking about my experience.

For the rest, please see point E.1.

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. I was nominated by Royal Decree as Belgium's candidate for the ICC. If I were to be elected, a Royal Decree will put me on full-time leave from the Brussels Court of Appeal every year for the duration of my term of office at the International Criminal Code pursuant to Article 308 of the Belgian Judicial Code. An additional member of staff would replace me at the Brussels Court of Appeal. Once I had completed my term, I would return to my post at the Brussels Court of Appeal to potentially complete my professional career there.

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

Yes.

3. 3. Work as a Judge of the ICC frequently involves many hours a day, including into the evenings and over some weekends. Holidays can only be taken at fixed periods during the year when, for instance, there are no hearings. Are you prepared for that?

In my role as judge I have been working similar hours for over 20 years.

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?

- Approach

First and foremost, experience of drafting judicial decisions - which are a different type of document to any other - and also of methodology and structure is required.

The first stage is knowledge of the case, attending hearings, conducting appropriate legal research and deliberating with colleagues.

As stated above, decisions taken in the context of the case could be much shorter and draw upon frameworks drafted in advance when this is possible, suitable and legal.

Grounds for decisions rendered by the trial chambers are subject to article 74 of the Rome Statute. As I also mentioned previously, I believe that the trial decision must be structured, comprehensive and should briefly set out the context, an accurate description of the alleged facts, the evidence which may be used or not, the final characterisation of the facts and the operative provisions in brief which set out the actual decision in terms of guilt or innocence [...]. Transparency and clarity should not be sacrificed. The final decision completes a judicial process. It is the culmination of years of work. This must be reflected in the final decision. The aim is not to write excessively but to be comprehensive. Structure is important. The accused, the prosecutor and the victims need to follow the reasoning of the judges. References should only be included when they support an argument, not to pad out the decision without adding value. In accordance with article 74 of the Rome Statute, a minority opinion in the case of a majority

decision should be included but only briefly because this is not the decision. All judges involved in the deliberations should sign regardless of how they voted. I would, however, abandon the practice - which I consider to be dangerous - of oral decisions (having to provide grounds sometimes involves realising that one has made a mistake in a pre-decision), along with written pre-grounds prior to the comprehensive grounds which give a confused impression of the Court. As far as dissenting and concurring opinions are concerned, please see point C6.

- The author of the draft

A judge needs to know how to and be able to draft decisions. I have always drafted my share of decisions and I enjoy writing. However, I believe that the ICC faces a huge challenge: maintaining and even increasing the quality of the work carried out whilst at the same time increasing the quantity of case files processed, without any loss of legitimacy or recognition, without exhausting its staff, without causing a judicial backlog which would give the ICC's detractors grounds to vilify the system as a whole. This is a gamble! Therefore, like certain international courts and national superior courts, the ICC judges should be supported by a team of lawyers who carry out research and draft part of their decisions. More team work!

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

Please see point B2.

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 worked effectively under the pressure of strong financial interests in my role as a judge dealing with financial crime. I have worked under pressure from the expectations of victims, the public, human rights organisations during trials involving violent crimes and sometimes with vague threats in trials involving organised crime and morality.

As an example, I can cite the fire in the criminal registry at the Appeals Court (opposite my office) and the threats I received following a judgement in a case involving gang rapes.

As a woman from a region in economic decline, I also have to deal with the glass ceiling and also recurrent press articles which put a degree of pressure on me. I have also had to convince people internally. I deal with pressure on a regular basis.

It is important to focus on the work, to stay the course and to encourage a calm and serene working environment regardless of the pressure one is under. Withstanding pressure involves walking away from legitimate or less commendable expectations and pursuing the ideal of justice which has always driven me, where each decision is a contribution to the ideal of equal justice for all with rights to be respected and people to be heard.

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?

At the time of writing, to my knowledge I am in good health. I have always worked hard. I have been on leave once for 15 days and once for a month, so in over 30 years of working I have taken 6 weeks of leave for work-related incapacity following the death of my husband (in 2004) when I had two young children who needed my attention following this bereavement.

E. Deontology

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

The question does not involve an exhaustive study of what eminent experts have written but rather giving a personal view of the independence of a judge in light of one's own experience.

I would link independence and impartiality. They are obviously two separate concepts but in many respects they contribute to similar reasoning on the ground without confusion. The issue which lies at the heart of the process is the freedom for a judge to act in every sense of the word. Is he or she bound from a psychological, legal, financial, physical [...] point of view or does he or she start with a blank page, which is written on as the hearings progress and documents are read, with only the law and his or her humanity as a guide?

The independence of a judge is a matter for the legal texts which set limits for the judge when they consider that the conditions are no longer met in theory to ensure that freedom. As far as the ICC is concerned, article 40 of the Rome Statute defines the boundaries of that freedom: not engaging in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence; not engaging in any other occupation of a professional nature when serving on a full-time basis at the ICC. Subject to these reservations alone, an ICC judge is presumed to be independent, in other words free to rule on innocence or guilt, to declare a prosecution to be in order or not, to hand down a sentence which is moderate or harsh; to grant reparations to victims or not. The range of possibilities is intellectually accessible to him or her. In other courts, independence is determined by other limits. For example, a juror at a criminal court cannot be a member of the country's government, nor a minister of religion, nor a judge but can be a lawyer or a member of the police force, etc.

In my view, impartiality is part of this same concept of liberty but must no longer necessarily be determined by a law. The Rome Statute mentions impartiality by prohibiting a judge from being involved in a case if his or her impartiality can reasonably be doubted, linking everything to the issue of disqualification, the outline of which is mentioned in article 41 of the Rome Statute and in rule 34 of the Rules of Procedure and Evidence.

Impartiality ensures a judgment for each defendant which is in line with procedures and free from bias. For my part, I make a distinction between "objective" impartiality and "subjective" impartiality, although both aspire to objectiveness pure and simple.

The fact of hearing a case at a national level, having a personal interest in the case, having expressed an opinion in public writings or documents [...] but also any other event in the life of a judge which is public knowledge and which gives rise to fears that he or she will not address the situation with the desired blank canvas is a cause of bias. This is the issue for a judge who writes articles of doctrine on various subjects. I describe the impartiality in question as "objective" because each party can have access to the information.

There is a much more insidious impartiality which lies within us, which is not public and which can only be tamed slowly over the course of a judge's life and career: "subjective" impartiality as I describe it. Asserting that one is objective because one is a good lawyer denies the fact that one is human and is judging humans. Denying one's subjectivity in the name of objectivity leads to the complete opposite result which involves judging with unconscious subjectivity a situation which needs to be handled objectively. On the other hand, being aware of one's own background, career, failings and subjectivity to aim for objectivity does indeed involve being impartial and achieving that ideal of objectivity. The best representation I have found is that of the distance between my body and the robe I wear on a daily basis. This "vented vacuum" enables me to maintain the right distance between what I am and the facts I am ruling upon. If

the robe is too far from my body, I become insensitive, inhuman even; if it is too close to my body then I no longer have sufficient distance from my own personal experience. There is a risk that I will fall into unconscious subjective bias. It is up to each person to develop self-awareness, to understand these concepts and to experience them during successive trials. No judge other than you can measure that distance, even though it is essential for both the accused and the victim. I describe it as subjective because only the judge is aware of it, and because of his or her loyalty and the trust he or she must inspire in others is forced to carry out this highly personal self-examination.

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

A conflict of interests arises when a judge could be affected by the consequences of a legal decision from a physical or psychological point of view, either directly or indirectly. As far as I am aware, things are relatively straightforward in legal practice.

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 suitability of a judge at the ICC or at any other court has nothing to do with the race, colour, gender or religion of a judge nominee. Suitability relates to his or her skills which are evidenced by qualifications and professional experience and good physical and psychological health.

Might these considerations come under the concept of objective impartiality? The response is obviously no, except if we imagine a situation where a judge might have expressed racist or sectarian views, either orally or in writing, which would be immediately punished either by this Committee at the recruitment stage or by disciplinary proceedings. The question of trying a national of the same country of origin was discussed in point C2 and partly follows the same reasoning. However, in this case scenario, and given the fragile nature of the International Criminal Court as a young court, and the national sensitivities of the States Parties, it might be preferable for reasons other than that of objective impartiality in its raw state but rather for the future legitimacy of the decision, for ICC judges not to deal with any case involving fellow nationals. The reason would therefore not be objective bias, which is essentially personal, but rather to prevent any criticism of the legitimacy of decisions, collectively for all judges.

Might these considerations come under the concept of subjective impartiality? It might be that the distance between the body and the robe reduces until it disappears, which leads to what I call unconscious subjective bias, which nonetheless strives consciously to treat the case objectively. Only a judge as an individual and following his or her personal self-examination can answer that question. It depends on his or her loyalty and the trust his or her colleagues place in him or her, the starting assumption being subjective impartiality.

Can considerations of race, colour, gender and religion be considered from the point of view of quotas to be established for categories discriminated against, in other words which are in the minority at the recruitment stage? There are only two possible categories in my view geographical and gender-related - because these are the only two categories which represent humankind universally:

- Geographical to ensure global representation (the candidate selection process takes this criterion into account by dividing the world into regions which must be represented by the 18 ICC judges). In this hypothesis, only legal nationality can be considered. It may be distinguished from any concept of race, colour and religion;
- Gender-based, to similarly ensure that the two halves of the human race are represented.

Following this analysis, the answer to question E3 is therefore no.

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

No.

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

I work in the Roman and civil law system. Victims can therefore lodge a civil action for damages at both the investigation stage and the trial stage of a case.

Although victims can be heard as witnesses, like at the ICC, their voice is heard in the courtroom during the debate on guilt. There is no doubt that one of the criticisms against such active participation involves the extent to which the accused can counter not only the arguments of the prosecutor but also those of the victims. There is no doubt that some accused persons must sometimes have experienced this burden as a breach of the equality of arms, although in actual fact this should not be the case if the presiding judge is in control of the trial.

There is no provision in the Rome Statute for victims to lodge a civil action for damages. If I were to be elected, I would nonetheless attempt to give them this possibility within the legal limits allowed by the Statute. Regardless of the quality of the assistance provided to and attention bestowed on the victims, my experience has shown that what they want above all is to "be" at the trial, not only for financial compensation, but to play a part in the debate which is the cause of their destruction and to be able to rebuild themselves in order to "live" again. Financial compensation becomes only an accessory of their suffering, even though any compensation as reparation is essential for them. This implies great skill in trial management. Giving someone the floor involves keeping control of the oral stage when the debates can be intense. It is for the presiding judge of the chamber to allow the parties to express themselves comprehensively and freely whilst at the same time reining in any over-enthusiasm by keeping control of the trial and remaining calm.

Obviously, there can be no question of ever giving a victim a chance to speak during the sentencing debate, which only concerns society and the accused.

In the Roman and civil law system, victims can introduce a public prosecution when the prosecutor remains passive. This option is currently being challenged in the Roman and civil law systems because it has led to some complaints with victims lodging civil actions for damages indiscriminately, which increases the number of proceedings with no other benefit. I do feel, however, that this possibility is an excellent tool for democracy in terms of access to legal justice, provided there is a filter. In this sense article 15, which allows the Prosecutor to initiate investigations *proprio motu* on the basis of information gathered, could be strengthened when the victims join forces to bring a case before the court.

Finally, there could be discussions about whether or not the ICC is congested with trials for reparations, so as to not to sap its strength. A conviction in principle and a return to the country of origin would also enable the latter to take over and take responsibility for part of its history, where possible. The ICC would then only ensure "complementarity". This opportunity, whose arrangements would need to be defined within the boundaries of the Rome Statute as it stands, would compensate for the effects of the Prosecutor's strategic plan in the event that the field of investigation is expanded to include persons of "lesser importance", which would increase the Court's proceedings which involve reparations.

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

I have always listened to victims carefully and kindly. The trial is a cathartic process for them. Their testimony is often useful to examine the essential facts of the crime(s) when they saw, heard and experienced the facts. Listening to a victim involves allowing them to open a door within themselves and glimpse the beginning of the mourning process. However, their suffering, no matter how intense, cannot be considered during the technical debate which examines the essential facts of the offences. Thus, suffering is not ipso facto, and save for legal exceptions, an aggravating circumstance of the offence. Establishing evidence is essential. However, their suffering may be acknowledged in the debate on sentencing, even if they do not have access to this debate.

Having said that, is it actually necessary to talk of finding a "balance" between the victim and the accused? I would qualify this. I cannot ignore the fact that the trial is a criminal one first and foremost and that there is a major risk for the accused (being deprived of the fundamental right to freedom). The procedural guarantees are therefore logically directed towards protecting the rights of the accused, whilst strictly and humanely respecting the fate of the victims.

Does this mean that victims are forgotten, along with their painful experiences and the life sentence inflicted upon them by the atrocities they have suffered? I do not believe this is the case. In my experience they show incredible dignity and understand that holding a fair trial is also essential for them. A sentence handed down at the end of a trial where the accused has had the opportunity to defend himself or herself and has benefited from the presumption of innocence, is legitimate. Any other solution would be open to challenge. Calling into question guilt based on evidence in the name of flawed proceedings would be an additional wound, which would be more or less insurmountable for the victims.

In my experience, the victims understand that the guarantees of a fair trial and the rights of the defence must be strictly adhered to, with no (identical) equivalent for them given what is at stake for the accused, but even more so for the legitimacy of the decision in the event of a conviction. They wish to be heard for what they have to say about their journey from the time the events occurred to the trial itself and doubtless for many years to come, and in this sense the judge must grant this legitimate request. The risk of the trial is still chiefly for the accused, who to this end benefits from enormous but essential guarantees for him or her and for the solidity of the outcome, in the critical interest of the victims too.

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 languages of the Court?

Yes. French is my mother tongue. I have an intermediate knowledge of English.

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.

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?

No public disclosure.

***