Process and legitimacy in the nomination, election and appointment of international judges

How are international judges nominated and elected?

Who is involved in appointing international judges and what considerations are at play?

Could the current procedures and practices be improved?

Summary

The Centre for International Courts and Tribunals (CICT) at UCL is undertaking a three-year AHRC grant funded research project entitled *Process and legitimacy in the nomination, election and appointment of international judges*. The research team comprises:

- Professor Philippe Sands QC, Director CICT, Faculty of Laws, UCL (Principal Investigator)
- Professor Kate Malleson, Queen Mary, Department of Law (Principal Investigator)
- Ruth Mackenzie, Deputy Director CICT and Principal Research Fellow, Faculty of Laws, UCL
- Penny Martin, Research Fellow, CICT, Faculty of Laws, UCL
- Kate Barber, Administrator, CICT, Faculty of Laws, UCL

More than 30 international or regional courts now exist. International judicial activity now encompasses trade, investment, human rights, war crimes, and issues of general international law. International courts increasingly impact on legal and judicial developments at the national level. Yet relatively little is known about how international judges are appointed.

The extension of the international judicial function mirrors developments at the national level. As judges play a greater role in policy decisions and rights adjudication at the national level, balancing democratic accountability with judicial independence has attracted growing attention. Similarly, at the international level, questions have arisen as to the appropriate composition and means of selection of the international bench. A broad debate is underway about how to enhance the legitimacy and competence of courts and strengthen the international rule of law through the development of appropriate judicial selection processes and the promotion of judicial independence and greater diversity in the international judiciary.

The aims and objectives of this project are to identify:

- The way that candidates for international judicial office are nominated at the national level; and
- How the election process takes place at the international level.

The analysis of empirical data on these processes will make a contribution to policy dialogue seeking to enhance the legitimacy, competence and credibility of international courts.

The project runs from March 2006 to February 2009.
The research

In international courts, judicial selection generally comprises two distinct phases: (i) nominations at the national level (directly by states or, in the case of the International Court of Justice (ICJ), by a state’s national group in the Permanent Court of Arbitration); and (ii) the election of judges from candidates by intergovernmental political bodies.

Governing instruments of international courts typically establish criteria to be fulfilled by individual judges, as well as criteria regarding the composition of the bench as a whole (e.g. geographic representation). However, it is not clear how these criteria are monitored or applied in practice, at either the nomination or election stage. Anecdotal evidence suggests that international judicial elections are highly politicised affairs. While some mechanisms to review international judicial nominations against objective criteria have been envisaged (such as the Advisory Committee provided for in the International Criminal Court (ICC) Statute), they have rarely been used in practice, except in regional judicial bodies such as the Caribbean Court of Justice and the European Union Civil Service Tribunal.

Very little academic research has been undertaken on this issue. Some recent research addresses the independence of the international judiciary, but there has been virtually no study of the national nomination processes that determine the ‘pool’ from which international judges are drawn, and relatively little analysis of international judicial election processes. This research will provide the first empirically based analysis of the selection process at the international court level: data and analysis that is currently lacking in academic and policy literature in this area. The objective of the project is not to call into question the appointment of individual judges, rather it is to bring to light, understand and make recommendations on the general processes for nominations and elections.

The project will focus on the nomination and election procedures for appointments to the ICJ and ICC. It will also make some comparative reference to the nomination and election procedures for other courts and tribunals at the national and international level, as appropriate. The project will use a range of research methods including an initial literature review; analysis of primary materials; questionnaire survey; interviews with delegates at intergovernmental meetings; in-depth country studies based primarily on interview data; and consideration of comparative perspectives based on expert meetings.

The project will seek to take into account the diversity of legal cultures, political systems and economic and social conditions across different countries, and will seek to ensure that a balanced and representative investigation is undertaken.

In light of the sensitivities of the issues raised by the research, the interviews and surveys undertaken during the project will be dealt with on a fully anonymised basis (unless otherwise agreed). The research team will maintain confidentiality and discretion in handling the information gathered during the project and will fully inform participants as to the use of that information.

By the conclusion of the project at the end of February 2009, the outputs of the project will include a published monograph, journal articles and an international policy briefing document.

Advisory Committee

The project is being conducted under the guidance of an Advisory Committee. The members of the Committee are as follows:

Lord Woolf (Chair) UK; former Lord Chief Justice
Florentino Feliciano Philippines; former WTO Appellate Body member
Gilbert Guillaume France; former ICJ President
Chief Justice Beverley McLachlin Canada; Chief Justice
Eduardo Valencia-Ospina Colombia; former ICJ Registrar
Sir Shridath Surendranath Ramphal Guyana; former Commonwealth Secretary General
Professor Peter Russell Canada; University of Toronto
Tuiloma Neroni Slade  Samoa; former Ambassador to UN and former ICC Judge
William Taft IV  US; former US Legal Adviser
Professor Elizabeth Wilmshurst  UK; International Law Programme, Chatham House
Ambassador Xue Hanqin  China; Ambassador to The Netherlands

The role of the Advisory Committee is to provide overall guidance and strategic advice on the conduct of the research. However, ultimate responsibility for the project and its outputs rests with the research team.

Further information

Further information about the progress of the research will be posted on this website in due course. If you would like more information about the project, please contact Ms Penny Martin, CICT Research Fellow, on email p.martin@ucl.ac.uk.

Selected References


Damrosch, Lori ‘The Election of Thomas Buergenthal to the International Court of Justice’ (2000) 94(3) *American Journal of International Law* 579-82


Harland, Christopher ‘International Court of Justice Elections: a Report of the First Fifty Years’ (1996) 34 *Canadian Yearbook of International Law* 303-367


Lachs, Manfred ‘Some Reflections on the Nationality of Judges of the International Court of Justice’ (1992) 4 *Pace Yearbook of International Law* 49-68

Lavelle, Roberto ‘Nationality as a Factor in the Election of the Members of the International Court of Justice, with Particular Reference to Occasional Elections’ (1996) 29(2) *Revue belge de droit international* 625-632


McWhinney, Edward ‘Law, Politics and “Regionalism” in the Nomination and Election of World Court Judges’ (1986) Fall 31(1) *Syracuse Journal of International Law and Commerce* 1-28


Rosenne, Shabtai ‘Elections of Members of the International Court of Justice: Late Nominations and Withdrawals of Candidacies’ (1976) 70 *American Journal of International Law* 546


