The Selection of Candidates for International Judicial Office: Recent Practice

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It seems fitting to offer some thoughts on elections to international courts and tribunals to Tom Mensah, who was himself nominated as a candidate by the Government of Ghana for election to the International Tribunal for the Law of the Sea, and who was duly elected in 1996. He was chosen by his fellow judges as the first President of the Tribunal, in which office he served with great distinction from 1996 to 1999. Moreover, Tom Mensah was chosen by Ireland and United Kingdom to preside over the *MOX Plant* Arbitral Tribunal established under Annex VII of the United Nations Convention on the Law of the Sea (having previously been a member of the International Tribunal for the Law of the Sea when it heard the *Provisional Measures* phase of the case).

Elections to international judicial bodies[1] have doubtless always been highly political, though campaigning seems to become ever tougher and longer (an early start can be vital), with an increasing role being played by "deals" within and external to a particular election. Many States, including the United Kingdom, continue to attach paramount importance to the qualities of the candidates in deciding for whom to vote, and by extension in deciding in respect of whom they are prepared to enter into deals. But this is not necessarily the case with all of the electorate. The focus of this chapter is on one aspect of the matter, the domestic nomination stage, and in particular recent British practice in relation to certain courts and tribunals.

The importance of the national selection stage for international judicial appointments and elections is obvious. If good candidates are not put forward, or do

[1] The present chapter only deals with permanent international courts and tribunals. The choice of the members of *ad hoc* arbitral tribunals, established to deal with particular cases, is equally interesting but a quite separate matter. Nor does the article consider the selection of "international" (that is, foreign) judges for what are often termed "internationalized" or "mixed" courts, such as the Special Court for Sierra Leone.

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not come forward, the election procedure cannot lead to good results. Conversely, the better the candidates the more chance there is of a good outcome. And in so far as the electorate does in practice have regard to the qualities of candidates, it is very much in a State's interest to put forward as its candidate the best qualified from among those willing and able to assume the office in question.

There are three main stages to be considered in the election of international judges: the qualifications; the national selection procedures; and the election or appointment procedures. The qualifications set out in the instruments establishing the courts and tribunals are generally pretty basic. The constituent instruments are, with a few exceptions, silent on the national selection procedures. Only as regards the election or appointment procedures do we find much detail.

These matters have been little studied outside Foreign Ministries, and not a great deal of information is publicly available. They are matters about which relatively little has been written, in part no doubt because of the sensitivity and secrecy surrounding them.[2] The Centre for International Courts and Tribunals at the Faculty of Laws of University College, London is currently undertaking a three-year Arts and Humanities Research Council-funded study entitled "Process and Legitimacy in the Nomination, Election and Appointment of International Judges". It is understood that this will focus on the nomination and election processes of the International Court of Justice and the International Criminal Court, assessing the manner in which the processes work in practice and making any appropriate recommendations.

I. The Election or Appointment Procedures

Before turning to the national selection procedures it is worth looking briefly at the election (or appointment) procedures for the various international courts and tribunals, since these (together with the qualifications required) are liable to have a considerable bearing on the nomination procedures. They vary considerably.

The procedures for electing the judges of the International Court of Justice are unique, the vote taking place simultaneously in the Security Council and the General Assembly. Apart from the European Court of Human Rights, it is the only procedure about which much has been written.[3]

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[2] A study prepared by a group of European jurists was published in May 2003 by the International Centre for the Legal Protection of Human Rights (Interrights), *Judicial Independence: Law and Practice of Appointments to the European Court of Human Rights* (hereafter *Interrights Report*), see especially Annex 1 (Comparative Appointments Procedure); see also P. Sands, "Global Governance and the International Judiciary. Choosing Our Judges", 56 *C.L.P.* 481 (2003), and the references at footnotes 3, 8 and 20 below.

[3] Sh. Rosenne, *The Law and Practice of the International Court, 1920-2005*, Vol. I (2006), 358-390; P. Georget, V. Golitsyn and R. Zacklin, Commentaries on Articles 4 to 6, in: *The*

For elections to the International Criminal Tribunals for the Former Yugoslavia and for Rwanda, the Security Council submits a list of candidates to the General Assembly.[4] To be elected, a candidate must obtain an absolute majority in the General Assembly.[5] As with the International Court, this can lead to the strange position in a particular ballot when too many candidates receive the necessary votes, in which case the election is rerun for all remaining vacancies. Elections to the International Criminal Court are very complex. The first election in February 2003 required no less than 33 ballots, lasting four full days.[6]

Elections to the International Tribunal for the Law of the Sea are relatively straightforward. There is an allocation of seats among the regional groups. To be elected a candidate has to obtain a two-thirds majority of those present and voting at a Meeting of States Parties to the United Nations Convention on the Law of the Sea. The two-thirds requirement has the potential to lead to a deadlock, as nearly happened at the first election in 1996.

Where elections are contested (which in practice means most elections where there are less seats than States Parties), deals are now routine, whereby pairs of States mutually agree to support each other's candidate or candidacy in the same or different elections.[7] Missions to the United Nations in New York, where many elections take place, have one or more elections officers, whose task it is to construct such deals and organise all that goes into a modern election campaign within the United Nations system: introducing the candidate to a large number of Permanent Representatives (by calling on them at their missions or meeting at United Nations Headquarters, often in the Indonesian Lounge); arranging

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Statute of the International Court of Justice: A Commentary (A. Zimmermann, C. Tomuschat and K. Oellers-Frahm eds, 2006), 225-260; R.R. Baxter, "The Procedures employed in connection with the United States Nominations for the International Court in 1960", 55 *AJIL* 445 (1961); M. Whiteman, 12 *Digest of International Law*, 1198-1203 (1971); Sh. Rosenne, "The Composition of the Court", in: *The Future of the International Court of Justice* (L. Gross ed., 1976), 377-441; G. Abi-Saab, L. Damrosch, "Ensuring the Best Bench: Ways of Selecting Judges", in: *Increasing the Effectiveness of the International Court of Justice: Proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court* (C. Peck and R. Lee eds, 1997), 165-206.

4 In the case of the Yugoslav Tribunal, the Security Council now establishes a list of between 28 and 42 candidates (for 14 seats); in the case of the Rwanda Tribunal, the Council nominates between 12 and 18 candidates (for six seats).

5 For the purpose of these elections, the Assembly includes non-Member States maintaining permanent observer missions at UN Headquarters.

6 See ICC-ASP/1/Res.3, and ICC-ASP/1/5. The second election (of six judges) in January 2006 was completed in a single ballot.

7 These deals are usually confirmed in writing, but nevertheless experience suggests that around 25 per cent may not be honoured. In any event, deals are rarely considered binding beyond the first round; if the election goes beyond the first round, some States must change their vote if a result is to be attained.

lunches at which the candidate is expected to perform; organising receptions for the candidate; and taking advantage of the receptions organised for his or her rivals.

II. National Selection of Candidates

In the case of most regional courts, each State Party is entitled to nominate a judge. The European Court of Human Rights is unusual in this respect, since each State is required to put forward three candidates.[8] States have generally indicated their order of preference, and the Assembly was expected to respect this in making its choice, but this has proved controversial of late. Nowadays the lists are considered by the Council of Europe's Rapporteur Group on Human Rights, which after an exchange of views transmits them to the Committee of Ministers. The Committee of Ministers then submits the names to the Parliamentary Assembly of the Council of Europe (PACE), which makes the choice among the three candidates. In 1996, PACE resolved to invite the candidates for interviews by a Sub-Committee of its Committee on Legal Affairs and Human Rights.[9]

In early 2003, a group of European jurists considered the law and procedure of judicial appointments to the European Court of Human Rights, and recommended that the Council of Europe should devise and distribute a template for national nomination procedures. This would have required States to advertise for candidates in the specialist press – where it exists – or in the national press; and

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[8] There was a flurry of writings on elections to the European Court of Human Rights in the mid-1990s, when the new Court was being developed: see N. Valticos, "Quels juges pour la prochaine Cour européenne des droits de l'homme?", in: *Liber Amicorum Marc-André Eissen* (G. Cohen-Jonathan ed., 1995), 415; J.A. Carrillo-Salcedo, "Quels juges pour la nouvelle Cour européenne des droits de l'homme?", 9 *RUDH* 1 (1997); H.C. Krüger, "Selecting judges for the new European Court of Human Rights", 17 *HRLJ* 401 (1996); H.G. Schermers, "Election of Judges to the European Court of Human Rights", 23 *Eur. L. Rev.* 568 (1998). See also the series of articles by J.F. Flauss: "Radioscopie de l'élection de la nouvelle Cour européenne des Droits de l'Homme", 35 *RTDH* 435 (1998); "Le renouvellement de la Cour européenne des Droits de l'Homme", 47 *RTDH* 693 (2001); "Retour sur l'élection des juges à la Cour européenne des Droits de l'Homme, à propos du juge espanol sortant", 55 *RTDH* (2003); "Brèves observations sur le second renouvellement triennal de la Cour européenne des Droits de l'Homme", 61 *RTDH* 5 (2005); and J. Hedigan, "The Election of Judges of the European Court of Human Rights", in: *Liber Amicorum Lucius Caflisch* (M.G. Kohen ed., 2007), 235.

[9] Resolution 1082 (1996). The first interviews took place in December 1998/April 1999: for details, see Hedigan at note 8 above. According to the *Interrights Report*, the Sub-Committee – after "a superficial assessment of the curricula vitae and a 15-minute interview" – reports (very briefly) on the qualities of a State's candidates and ranks them. The Sub-Committee being a political body, there is a risk of politicisation.

to establish an independent body, consisting of independent persons including judges and individuals with academic and other experience of international law and human rights, to devise the State's list. The independent body would consult with interested civil society. It would then shortlist and interview candidates. Where, as a result of a thorough procedure, three candidates emerged but there was a hierarchy between them, the independent body should be free to rank the candidates. As a general rule, the Government should follow the recommendations of the independent body. In addition, the group made recommendations to ensure fair and effective interviewing, including agreement in advance on the areas to be covered in the questions; ensuring that the questions are relevant to the agreed criteria and do not carry built-in advantages for some candidates; and covering the same areas with each candidates.[10]

In 2004, PACE recommended that, in addition to the moral qualities and experience expected of candidates, the Committee of Ministers should invite Governments to meet the following criteria:

i. that a call for candidatures has been issued through the specialised press;

ii. that candidates have experience in the field of human rights;

iii. that every list contains candidates of both sexes;

iv. that the candidates have a sufficient knowledge of at least one of the two official languages;

v. that the names of the candidates are placed in alphabetical order; and

vi. that as far as possible no candidate should be submitted whose election might result in the necessity to appoint an *ad hoc* judge.[11]

The Committee of Ministers' reply took note of the criteria, and invited Governments to make every attempt to meet them when preparing lists of candidates, but raised some important points on criteria iii and v and invited PACE to consider modifications.

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[10] *Interrights Report*, 27-28.

[11] PACE Recommendation 1649 (2004). See also PACE Resolution 1366 (2004), as amended by Resolution 1426 (2005); the Committee of Ministers Reply of 22 April 2005; and the Motion for a Resolution in Document 11028 of 21 September 2006 (National Selection Procedures for Candidates for the European Court of Human Rights). In October 2006, the Bureau of PACE proposed that the proposed Motion be referred to the Committee on Legal Affairs and Human Rights for report. A further amendment to Recommendation 1649 (2004) was proposed by the Committee on Legal Affairs and Human Rights in March 2007 (Doc. 11208 of 19 March 2007). On 17 April 2007, following a short debate, PACE rejected the amendment. For background, see Hedigan at note 8 above.

The statutory requirements for the qualifications and nomination[12] of candidates for international judicial office are for the most part rudimentary, rarely going beyond some very general qualities that the judges must possess. This is the case, for example with Article 2 of the Statute of the International Court of Justice.[13] In the case of the International Tribunal for the Law of the Sea the sole legal requirement for membership is that the judges have "recognized competence in the law of the sea." Given the importance of general international law in the work of the Tribunal, it has been suggested that this formal requirement may be to narrow.[14]

One exception is the *International Criminal Court*. Article 36 of the Rome Statute sets out quite detailed requirements for the judges. As is pretty standard, they must be of high moral character, impartiality and integrity, and possess the qualifications required for appointment to the highest judicial office in their respective States. In addition, every candidate must have either (i) established competence in criminal law and procedure, and the necessary relevant experience in criminal proceedings (List A candidates), or (ii) 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 (List B candidates). At least two thirds of those elected must come from List A. The emphasis on experience in criminal proceedings, and on relevant professional experience, reflects the particular role of this international court, and has ensured that it has a sufficient number of judges with the necessary experience to conduct criminal trials. For the first election in 2003, the United Kingdom decided to nominate a List A candidate, given the importance of experience in criminal law and procedure for judges appointed to international criminal tribunals.

There are obvious problems (in terms of ensuring a fair trial) if elections to an international criminal tribunal, in particular, are politicised, and for this reason the Statute of the ICC includes fairly detailed requirements governing nominations. States Parties are given the option of proceeding through essentially the same arms-length process as for nominations to the ICJ (discussed below) or utilising "the procedure for the nomination of candidates for appointment

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12 According to the *Interrights Report* (at page 9), "States have absolute discretion with respect to the nomination system they adopt … even in the most established democracies, nomination often rewards political loyalty more than merit".

13 Article 2 of the ICJ Statute requires that the judges be elected "from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law".

14 M.C. Wood, "The International Tribunal for the Law of the Sea and General International Law", 22 *Int'l J. Marine & Coastal L.* (2007).

to the highest judicial offices in the State in question". The Statute goes further and expressly requires a nominating State not merely to say whether a candidate is put forward for List A or List B but to specify in the necessary detail how the candidate meets the qualifications laid down. The intention was evidently to encourage nominating States to take account of the need for properly qualified judges, and to offer the States Parties some objective basis for casting their votes when it came to the election.

The Rome Statute also provides that "[t]he Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations", in which case the Assembly must also establish its composition and mandate.[15] The idea of a screening mechanism proved controversial, and the provision is optional. The Assembly did not establish a Committee for either the first or the second election (in 2003 and 2006).

The procedure for nominating candidates for election to the *International Court of Justice* is unique,[16] and goes back to the Statute of the Permanent Court of International Justice, drawn up in 1920.[17] Nominations are not by States, but by "national groups". The national group consists of the members (normally four) of the Permanent Court of Arbitration belonging to the State concerned or, where the State is not a party to either of the Hague Conventions for the Peaceful Settlement of Disputes, by a group specially appointed (under the same conditions as those prescribed in the 1907 Hague Convention) for the purpose of making nominations.

In the United Kingdom, the national group in the Permanent Court of Arbitration decides on its nominations independently of government.[18] The four members of the national group are formally appointed by the Secretary of State for Foreign and Commonwealth Affairs, who may be expected to consult other interested Ministers (in particular the Lord Chancellor and the Attorney General). The appointments are for six years, as prescribed in the Hague Conventions, and the members are in practice reappointed if they wish to continue.

The categories of persons composing the United Kingdom national group are nowhere laid down, and are no doubt subject to change over time, depending on who is available. The current members are Dame Rosalyn Higgins, Sir Elihu Lauterpacht, Lord Bingham of Cornhill, and Sir Arthur Watts: that is to say, the judge of British nationality on the International Court of Justice, who was an eminent academic and practitioner in the field of international law, including

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15 Rome Statute of the International Criminal Court, art. 36(4)(c).

16 Though now replicated (with additions) for the ICC.

17 O. Spiermann, "'Who Attempts Too Much Does Nothing Well': The 1920 Advisory Committee of Jurists and the Statute of the Permanent Court of International Justice", 73 *BYIL* 187 (2002), esp. at 219-227.

18 For a view of an earlier period, see Sands, note 2 above, 486-499.

before the International Court of Justice; a senior international law academic, who is also a practitioner with extensive experience of the International Court of Justice and other international courts and tribunals; a very senior judge (who is also the Chairman of the British Institute of International and Comparative Law); and a former Legal Adviser to the Foreign and Commonwealth Office, now an international law practitioner with extensive experience of appearing before the International Court and as counsel and arbitrator with other tribunals. This membership largely reflects the bodies mentioned in Article 6 of the Statute,[19] and has a range of experience, that of international law practitioners and academics, of the domestic judiciary, and of international law work within government. It is important that between them the members of the group know the field, both in the United Kingdom (when it comes to the choice of a British candidate) and world-wide (since at each regular election the group may, and regularly does, nominate up to four candidates; it may also nominate candidates at by-elections).

While they keep in close contact with the Legal Adviser to the Foreign and Commonwealth Office, not least to ensure that they are up-to-date with developments concerning upcoming elections, the members of the national group operate free from government control. This ensures an independent, apolitical, and professionally knowledgeable nominating process. As already mentioned, it is essential that, in addition to a full understanding of the Court, the election process and the qualities needed on the Bench, the members of the group know the field of international lawyers, around the world, from whom the choice normally comes and are fully up-to-date with developments. They make their selection based on the qualifications and qualities of the candidates, and with a view to an appropriate distribution of the fifteen seats.

The recently established *European Union Civil Service Tribunal*,[20] a seven-member tribunal appointed by the Council of Ministers of the then twenty-five (now twenty-seven) member European Union, is innovative, and elements thereof could perhaps provide useful precedents.[21] It is innovative in two respects: there is a direct applications system, and there is an independent system for assessing

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[19] Under Article 6 of the ICJ Statute, each national group is "recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law".

[20] For a description of the procedure, and the first election in 2005, see H. Cameron, "Establishment of the European Civil Service Tribunal", 5 *Law & Prac. Int'l Cts. & Tribunals* 273 (2006).

[21] It was noted, however, during the negotiations that the Tribunal would deal with "highly specialized litigation", and that, in these circumstances, the arrangements were "entirely without prejudice to those that may be envisaged for other judicial panels": see Cameron, note 20 above, 280.

the candidates' qualifications. Any person who is a Union citizen[22] may put themselves forward in response to an advertisement – there is no nomination procedure. An independent selection committee (appointed by the Council of Ministers on a recommendation from the President of the Court of Justice of the European Communities) then assesses each candidate's suitability to perform the duties of a judge at the Tribunal. The Selection Committee draws up an opinion and a shortlist of at least twice as many candidates as there are judges to be appointed. The Council of Ministers then appoints the judges from among these candidates, ensuring "a balanced composition of the Tribunal on as broad as geographical basis as possible from among nationals of the Member States and with respect to the national legal systems represented".[23]

On the occasion of the first election to the Tribunal, in 2005, there were 243 applications. The Selection Committee interviewed 26 candidates, and then drew up an opinion and a shortlist of 14. The Council of Ministers then appointed the first seven judges listed, ensuring the required balanced composition in the Tribunal.[24]

The *Caribbean Court of Justice* likewise has an interesting process for the appointment of judges, designed to ensure independence from Governments. The President of the Court is appointed by a three-fourths vote of the Contracting Parties on the recommendation of a Regional Judicial and Legal Services Commission. The other judges are appointed by a majority vote of all the members of the Commission. The Commission itself is appointed in a manner that is designed to ensure its independence.[25]

For these two new courts (the European Union Civil Service Tribunal and the Caribbean Court of Justice), and in the much early case of the World Court, the nomination of candidates for international judicial office is not exclusively a matter for governments. It may, therefore, be less susceptible to political favour or influence. But in other cases the nomination process is left, under the constituent instruments, entirely at the discretion of governments, and in these cases it is essential, if confidence in the courts and tribunals is to be maintained, and enhanced, that the method adopted for selecting candidates produces the best available people. Recent British practice is of interest in this regard.

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[22] Article 3(2), Annex 1, Statute of the Court of Justice, inserted by Council Decision 2004/752.

[23] Article 3(1), Annex 1, Statute of the Court of Justice, inserted by Council Decision 2004/752.

[24] See Cameron, note 20 above, 281.

[25] Agreement Establishing the Caribbean Court of Justice, articles IV and V. See D.E. Pollard, *The Caribbean Court of Justice* (2004), 9-13, 37-38.

III. Current Selection Procedures in the United Kingdom

Unlike domestic judicial appointments,[26] the process for the selection of candidates for international judicial office is not laid down by law in the United Kingdom. Nevertheless, starting about ten years ago, a new type of procedure has been used for selecting candidates for those courts and tribunals whose constituent instruments leave the matter in the hands of governments. This includes such diverse courts and tribunals as the European Court of Human Rights; the European Courts in Luxembourg (judge on the Court of Justice of the European Communities, judge on the Court of First Instance, and Advocate-General); the International Criminal Tribunal for the Former Yugoslavia; the International Criminal Court; and the International Tribunal for the Law of the Sea.[27] The process is not uniform, since it depends in some measure on the nature of the court or tribunal, on any provisions concerning the nomination of judges in the constituent instrument, on the election or appointment process, and on any particular circumstances (for example, where there is urgency, as was the case with the vacancy caused by the resignation, through ill-health, of Richard May, the British judge on the International Criminal Tribunal for the Former Yugoslavia). But, broadly speak-

[26] In April 2001, the Commissioner for Judicial Appointments was established as an independent body to consider complaints by applicants for judicial appointment to courts in England and Wales. As part of the constitutional reforms that came into force in April 2006, the Judicial Appointments Commission (JAC) was established as a new independent body to select candidates for judicial appointments in England and Wales. In addition, a new Ombudsman was established to hear complaints from candidates. In October 2006, the JAC set out the procedure for selecting High Court judges, and indicated that the qualities required were: intellectual capacity, decisiveness, fairness, good communication, and efficiency. In Scotland, a Judicial Appointments Board, which began is work in June 2002, provides the First Minister with a list of candidates recommended for appointment to judicial office. The Northern Ireland Judicial Appointments Commission was established in June 2005. There was a Northern Ireland Commissioner for Judicial Appointments from 2001 to 2006. The Office of the Northern Ireland Judicial Appointments Ombudsman was established on 22 September 2006.

[27] A similar procedure is used for the choice of candidate for the Human Rights Committee under the International Covenant on Civil and Political Rights. The procedure is not necessarily applied to a (first) re-election; as the *Interrights Report* pointed out, "judicial independence may require that, so far as judges have renewable terms of office, sitting judges should be automatically re-nominated" (p. 24). Nor has the procedure been used for the large number of relatively minor or occasional appointments, which are often in practice essentially nominal. These are unpaid, sometimes even when there is a case. Examples include the numerous lists of arbitrators under various multilateral treaties. However, in the case of the nominations of an *ad litem* judge of the Rwanda Tribunal and to the lists of arbitrators and conciliators maintained by the International Centre for Settlement of Investment Disputes, a modified form of the procedure (albeit without interviews) was used.

ing, the procedure currently used by the United Kingdom Government for the selection of candidates for international judicial office, in those cases where the nomination is a matter for government, is along following lines.

First, an advertisement is placed in the legal pages of the national press and/or the specialist legal press, as well as on appropriate websites, inviting candidates with the necessary qualifications to apply and setting out the nature of the position and the basic terms and conditions. In addition, there may be informal approaches to those who might be expected to be interested, for example within the judiciary (including through the various judicial email systems) or with the Foreign and Commonwealth Office's academic international law contacts. Applicants are generally sent an information pack (which may be prepared with the assistance of the incumbent), including a detailed description of the post and giving the detailed terms and conditions. Applicants are requested to provide a *curriculum vitae,* together with a self-assessment of their suitability and qualifications for the post and the names of referees.

A selection panel is formed, which will usually comprise judicial, legal, civil service and lay members. A typical panel might be composed of five persons: the Permanent Secretary or other senior official of the Ministry of Justice (formerly the Lord Chancellor's Department); the Legal Adviser to the Foreign and Commonwealth Office or one of the Deputy Legal Advisers; two senior members of the judiciary of England and Wales, Scotland or Northern Ireland; and an independent lay member (a non-lawyer). Thus, for example, in the case of the selection of a candidate for election to the International Criminal Court in 2002/2003, the panel comprised Sir Hayden Phillips, Permanent Secretary at the Lord Chancellor's Department, as Chair; the present author (Foreign and Commonwealth Office Legal Adviser); Lord Justice Simon Brown (Court of Appeal of England and Wales); Lord Cullen (Lord President, President of the Court of Session in Scotland); and Ms Joanna Foster (Chair, Lloyds TSB Foundation, and Chair, Equal Opportunities Commission).

The panel first meets to sift the candidates in order to choose those to be called for interview, and to discuss the selection criteria and the format of the interview. Among the criteria, aside from the appropriate legal requirements, is the ability to have influence within the court (which may be a large collegial body, quite different from most national courts) and, depending on the court, electability. For example, in the case of the European Court of Human Rights, the selection criteria might be as follows: eligibility; legal knowledge; skills and abilities; and high moral character. The selection panel would also be instructed to select the candidates considered to be best qualified for the position, regardless of ethnic origin, gender or other factors. In the case of the selection, in 2005, of a candidate for Advocate General in Luxembourg, the job description included among the selection criteria a good understanding of Community law and the ability to produce opinions of a high quality; an understanding of how decisions

of the European Court of Justice impact upon the legal systems of Member States; some experience of legal practice; interpersonal skills; and good organisational skills. Knowledge of French was also considered important.

Interviews last about one hour. Candidates are asked to make a short presentation outlining their reasons for applying for the post and what they consider to be its challenges. They will be questioned at some length to determine their suitability as against the selection criteria. For example, in the case of the European Court of Human Rights, there might be a range of questions on United Kingdom and European human rights law; on the relationship between Strasbourg and domestic human rights law; and to assess the candidates' interpersonal skills, motivation and suitability for the job. Similar questions are asked of each candidate to ensure consistency.

Following the interviews, the panel makes its recommendation to Ministers, who (having agreed in advance to the procedure) can be expected to approve the recommendation, absent some highly exceptional consideration.

IV. Conclusions

Some recent innovations, both international (the procedures for establishing candidates for the European Union Civil Service Tribunal, developments in connection with the European Court of Human Rights, and the procedures for the Caribbean Court of Justice) and national (recent British practice in the selection of candidates for a number of courts and tribunals, which may well be mirrored elsewhere), suggest various ways of improving the procedures in cases where, under the constituent instruments, governments are solely responsible for the selection of candidates for international judicial office.

Where nothing is laid down, it is for each State to decide the method for selecting candidates for international judicial office, within the applicable treaty provisions, taking into account its own circumstances and the peculiarities of the election in question. Whether the developments described above lead to better results is not something that can be established by empirical evidence, though it would seem probable that the wider the net is cast the more likely it is that good candidates will be found. But much depends on the nature of the court or tribunal in question. To find candidates for an international criminal tribunal, or a human rights organ, where there is potentially a wide field, is a different matter from selecting candidates for a court of general jurisdiction in the field of international law. Each court or tribunal is different. What matters, at the end of the day, is that the best available candidates (in terms of qualifications and abilities) are nominated, and that in making the choice political considerations, and the possibility of personal bias, are limited so far as possible. In short, what is needed are national selection procedures that produce candidates of the quality of Tom Mensah.