PEACE & SECURITY – PAIX ET SÉCURITÉ INTERNATIONALES
EuroMediterranean Journal of International Law and International Relations
Issue 10, January-December 2022 | ISSN 2341-0868
DOI http://dx.doi.org/10.25267/Paix_secur_int.2022.i10.1204

Citation: PETIT DE GABRIEL, E. W: "Gender Parity in International Legal Bodies: Are We there yet?", *Peace & Security – Paix et Sécurité Internationales*, No 10, 2022.

Received: 30 June 2022.
Accepted: 21 September 2022.

GENDER PARITY IN INTERNATIONAL LEGAL BODIES: ARE WE THERE YET?

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ABSTRACT: This paper discusses the different types of rules inducing a gender-balanced composition of international legal bodies, the recent evolution in the composition of those bodies from a gender perspective, and the relationship between the aforementioned rules and the state of the art since the 2021 Human Rights Council Report on current levels of representation of women in human rights organs and mechanisms. The study differentiates between the hard and soft rules on gender equality and the rules governing the nomination and election procedures for those legal bodies. The final aim is to draw conclusions on the nature and effectiveness of the different set of rules, proposing a twofold strategy to advance the gender balance question. Undoubtedly, there is no way back, according to the already long-lasting social and legal debate in the academy and the growing domestic and international practice. Although fruits have been reaped, it is necessary to develop new legal tools to strengthen the results achieved and fill the gaps.

KEY WORDS: Gender parity, human rights bodies, international courts, International Law Commission; Sustainable Development Goal #5.

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LA PARIDAD DE GÉNERO EN LOS ÓRGANOS JURÍDICOS INTERNACIONALES: ¿OBJETIVO CONSEGUIDO?

RESUMEN: Este artículo analiza los diferentes tipos de normas dirigidas a lograr una composición equilibrada de género de los órganos internacionales con competencias jurídicas, la evolución reciente en la composición de dichos órganos desde una perspectiva de género y la relación entre las normas mencionadas y dicha evolución, principalmente teniendo en cuenta el Informe del Consejo de Derechos Humanos sobre los niveles actuales de representación de las mujeres en los órganos y mecanismos de derechos humanos, de 2021. El estudio diferencia entre las normas de *hard* y *soft law* en relación a la igualdad de género y las normas que regulan los procedimientos de nominación y elección de los miembros de estos órganos. El objetivo final es extraer conclusiones sobre la naturaleza y eficacia de los diferentes conjuntos de normas, proponiendo una doble estrategia para avanzar. Sin duda, la ya larga vida del debate social y jurídico en la academia y la creciente práctica estatal e internacional hacen imposible el retroceso. Si bien se han cosechado frutos, ese necesario desarrollar nuevas herramientas legales que permitan generar nuevos resultados.

PALABRAS CLAVE: Igualdad de género, órganos de derechos humanos, tribunales internacionales, Comisión de Derecho Internacional, objetivo de desarrollo sostenible 5.

DES ORGANES JURIDIQUES INTERNATIONALES PARITAIRES : OBJECTIF ATTEINT OU EN ATTENTE ?

RESUMÉ: Cet article analyse les différents types de normes facilitant une composition équilibrée en genre des organes internationaux dotés de pouvoirs juridiques, l'évolution récente de la composition de ces organes dans une perspective de genre, et la relation entre les normes susmentionnées et ladite évolution, en tenant compte principalement du rapport du Conseil des droits de l'homme sur les niveaux actuels de représentation des femmes dans les organes et mécanismes des droits de l'homme, de 2021. Cette étude fait la distinction entre les normes de droit dur et souple (*hard* et *soft law*) en matière de parité de genres et les normes qui régissent les procédures de nomination et d'élection des membres de ces organes. Le but ultime est de tirer des conclusions sur la nature et l'efficacité des différents ensembles de règles, en proposant une stratégie à deux volets pour aller de l'avant. Sans aucun doute, la vie déjà longue du débat social et juridique dans l'académie et la pratique croissante des États tant á niveau interne qu'internationales rendent impossible tout marche en arrière. Bien que des fruits aient été récoltés, il est nécessaire de développer de nouveaux outils juridiques qui permettent de générer de nouveaux acquis.

MOTS-CLÉS: Parité de genre, organes des droits de l'homme, tribunaux internationaux, Commission du droit international, objectif de développement durable 5.

I. INTRODUCTION

Women, like men, should try to do the impossible.
And when they fail, their failure should be a challenge to others.
—Amelia Earhart (1899–1937)

It has been once and again underlined that "International Law is Western, white and male".[2] While this citation conveys three different obstacles –

[2] Emtseva, Julia, "Practicing Reflexivity in International Law: Running a Never-Ending Race to Catch Up with the Western International Lawyers", *German Law Journal*, vol. 23, n° 5 (2022),

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ISSN 2341-0868, No 10, January-December 2022, 1204
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geographical, racial, and gender-related – to a truly international, universal, International Law (IL), this paper is concerned with the very last claim.

International Law is male. Needless to say, the roots for a somewhat reduced female presence and impact in IL are various and complex: socio-economic background, geographic origin, and academic career structure (including research and publication barriers) – i.e. the self-perception and educational culture of women in academia and law, as illustrated by different authors.[3]

This paper will discuss the composition of international legal bodies from a gender perspective as one of the many declinations of the idea that IL is male. Therefore, it will neither discuss the general involvement of women in IL (as researchers, professors, and public servants at the national or international level), nor the impact that specific women or gender have already excited in IL,[4] nor the reasons why a gender-balanced composition is to be considered

pp. 756–768, at 757, doi:10.1017/glj.2022.46.

[3] Ibidem, pp. 758–760.

[4] Legal literature has expanded in the last thirty years. A selection throughout the period considered is offered: Charlesworth, Hillary, Chinkin, Christine, and Wright, Shelley, "Feminist Approaches to International Law", *American Journal of International Law*, vol. 85, n° 4, 1991, pp. 613–645; Charlesworth, Hillary, "Feminist Methods in International Law", *American Journal of International Law*, vol. 93, n° 2, 1999, pp. 379–394; Steains, C., "Gender Issues in the Statute of the International Criminal Court", in R. Lee, ed., *The International Criminal Court*, The Hague, Kluwer Law International, 1999; Charlesworth, Hillary, & Chinkin, Christine, *The Boundaries of International Law: A Feminist Analysis*, Manchester, Manchester University Press, 2000; Cossman, Brenda, "Gender Performance, Sexual Subjects and International Law", *Canadian Journal of Law and Jurisprudence*, vol. 15, n° 2, 2002, pp. 281–296; Malleson, Kate, "Justifying Gender Equality on the Bench: Why Difference Won't Do", *Feminist Legal Studies*, vol. 11, n° 1, 2003, pp. 1–24; Otto, Diane, "The Exile of Inclusion: Reflections on Gender Issues in International Law over the Last Decade", *Melbourne Journal of International* Law, vol. 10, n° 1, 2009, pp. 11–26; Mackinnon, Catharine A., "Creating International Law: Gender and Leading Edge", *Harvard Journal of Law and Gender*, vol. 36, n° 1, 2013, pp. 105–121; Pillai, Priya, "Women in International Law: A Vanishing Act?", *Opinio Juris*, 3 December 2018; Odio Benito, Elizabeth, "Symposium on Gender Representation: Gender Parity in International Courts – The Voice of an International Judge", *Opinio Juris*, 4 October 2021; Rubio-Marin, Ruth, "Women's Participation in the Public Domain Under Human Rights Law: Towards a Participatory Equality Paradigm Shift?", in Ruth Rubio Marin and Will Kymlicka, eds., *Gender Parity and Multicultural Feminism: Towards a New Synthesis*, Oxford University Press, 2018, pp. 66–96; Baetens, Freya, ed., *Identity and Diversity on the International Bench: Who is the Judge?*, Oxford University Press, 2020.

a desired or relevant outcome in terms of legitimacy and governance.[5] While these connected questions are of the utmost relevance, they go beyond the extent of the pages submitted.

The perspective chosen in this paper is narrowed down to the composition of international legal bodies whose very role is to rule, decide, or otherwise adopt legal recommendations. Nevertheless, this paper will not refer to those organs or bodies in which membership is governmental. For those organs, the composition cannot be analysed easily in terms of gender balance. Every state designates its representative according to political and diplomatic logic or at least based on domestic rules. The decision is, furthermore, contingent and shifting. The state neither considers nor can be held accountable for the overall gender composition of a broader intergovernmental organ, which in its turn cannot revisit and discard the state designation to achieve a gender-balanced composition. As an example of this exclusion, we will not deal with the composition of the Sixth Committee of the United Nations General Assembly (UNGA), devoted to legal affairs, or that of the Human Rights Council (HRC). In turn, we will refer to organs or bodies entrusted with legal competencies, whenever its members perform in their capacity, as individuals are entitled to a non-discrimination human right. Examples of these organs can be found within the UN structure, such as the International Court of

[5] An analysis of the specific "impact of underrepresentation of women in international bodies" has been included in the Report of the HRC Advisory Committee, A/HRC/47/51, 21 May 2021, differentiating at least three perspectives: the "impact on the rights to equality and to non-discrimination" (paras 18–33); the "impact on the effectiveness of United Nations bodies and mechanisms" (paras 34–37) and the "impact on the range of issues and perspectives considered by United Nations bodies" (paras 38–41). For an analysis from the perspective of legitimacy of international legal institutions, see Grossman, Nienke, "Sex Representation on the Bench and the Legitimacy of International Criminal Courts", *International Criminal Law Review*, vol. 11, 2011, pp. 643–653. See also Robinson, Tracy, "¿Por qué la diversidad es importante?", pp. 6–9, and Grossman, N., "¿Es importante la presencia de juezas para la legitimidad de la Corte Interamericana de Derechos Humanos?", in Centro por la Justicia y el Derecho Internacional (CEJIL), ed., *Proceso de selección de integrantes de la Comisión y la Corte Interamericana de Derechos Humanos: Reflexiones hacia una reforma*, Buenos Aires, 2014, pp. 23–26. Further insights can be found in Grossman, Nienke, "Achieving Sex-Representative International Court Benches", *American Journal of International Law*, vol. 110, n° 1, 2016, pp. 82–95, at 89–90; and Baetens, Freya, "Identity and Diversity on the International Bench: Implications for the Legitimacy of International Adjudication", in Baetens, *Identity and Diversity on the International Bench*, pp. 6–21.

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Justice (ICJ), the International Residual Mechanism for Criminal Tribunals (IRMCT), the International Law Commission (ILC), the human rights bodies – treaty-based or otherwise, dependent on the HRC, such as working groups and special rapporteurs – and the very Advisory Committee to the HRC.[6] Attention should also be paid to other bodies outside the UN structure, like the array of international courts, such as the International Tribunal for the Law of the Sea (ITLOS), the International Criminal Court (ICC), the Inter-American Court of Human Rights (IACtHR), the African Court on Human and Peoples' Rights (AfCHPR), the European Court of Human Rights (ECtHR), and the Court of Justice of the European Union (CJEU), inclusive of both the European General Court (EGC) and the European Court of Justice (ECJ).

The analysis will consider the legal rules that govern the composition of these bodies, commonly regulated by their statutes, protocols, founding treaties, rules, or resolutions (such as those creating special rapporteur positions or working groups).[7] We will refer to this broad, erratic set of rules as the "statutory composition rules". They usually provide which organs in an international organisation are in charge of the election among the candidates for any term of office. Very often, those rules include a specific and independent phase for nominating the candidate(s), which does not usually coincide procedurally with the previous one. We will consider these rules under the term "statutory nomination rules". These two terms – the statutory composition rules and the statutory nomination rules – will be generally employed, substituting specific terms such as protocol/convention/charter/resolution. When relevant, we may include the specific denomination of the statutory rule referred to.

The departing point will present the existing general framework on gender parity, in terms of hard and soft undertakings and their opposability vis-à-

[6] We are not referring to the United Nations' internal dispute settlement bodies: the United Nations Dispute Tribunal (UNDT) and the United Nations Appeals Tribunal (UNAT). For the current composition and upcoming appointments, see A/77/129, Appointment of judges of the United Nations Appeals Tribunal and of the United Nations Dispute Tribunal. Report of the Internal Justice Council, 5 July 2022.

[7] A comparative description contemplating nomination and election requirements can be found in Robertson, Elizabeth Anderson, J., and Burke, Kathlene, *Women at the Table: Best Practices for Election of Members to International & Regional Treaty Bodies*, 2019, annexes part 2 (nomination) and part 3 (election).

vis states and, more importantly, international organisations (section 2). From there, we will move towards an analysis of women's representation deficit in international legal bodies and a selection of different legal avenues towards a better gender balance (section 3). Finally, we will address the recent evolution in gender balance in the international legal bodies considered in an attempt to connect the trends with a reflection on the impact of the different legal paths exposed, with concluding remarks on further avenues to be followed (section 4).

II. GENDER EQUALITY, SUSTAINABLE DEVELOPMENT GOALS AND INTERNATIONAL LAW

Real change, enduring change,
happens one step at a time.
—Ruth Bader Ginsburg (1933–2020)

The preamble to the UN Charter (1945) states the determination of "We, the peoples of the United Nations (…) to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women".

Assuming that all UN actions and policies should be guided by the "sex equality" principle, this notion has been displaced today by *gender parity*.[8] When referred to the composition of a body or organ, it is more often described as *gender balance*, so the goal is not described as a 50/50 distribution of seats but a more flexible interval, usually on terms of 40/60 for any other gender.

Sex and gender equality, parity, or balance achievement have been built upon different types of rules, from treaties to political documents and programs (section 1). The main shortcoming of this process has turned out to be the scarce (in)opposability of those obligations – hard or soft – to

[8] Sex and gender are different constructs, one biological and the other modelled over a socially constructed role. They have been analysed as different categories beyond the historical construct of an old (sex) versus a new (gender) category, both in international law and, broadly, in research. For all, see Charlesworth, Hillary, Chinkin, Christine, and Wright, Shelley, "Feminist Approaches to International Law", *American Journal of International Law*, 1991, vol. 85, nº 4, 1991, pp. 613–645; Heidari, Shirin *et al.*, "Sex and Gender Equity in Research: rationale for the SAGER guidelines and recommended use", *Research Integrity and Peer Review* 1, n° 2, 2016, https://doi.org/10.1186/s41073-016-0007-6.

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international organisations themselves and, therefore, to the international legal bodies dependent on them (section 2).

1. Hard v Soft Rules on Gender Equality at the Universal Level

The UN's initial engagement on sex equality[9] was dependent on the Economic and Social Council (ECOSOC), which took action in human rights development during the early decades of the organisation. The very first two subsidiary organs created by the ECOSOC as early as 1946 were directly linked to it: the Commission of Human Rights – in place from 1946 until 2006, when it was replaced by the UN Human Rights Council (HRC) and then organically transferred to the UNGA – and the Committee on the Status of Women (CSW).

First of all, the first meeting of the Commission of Human Rights in 1947 gave birth to the drafting committee of the Universal Declaration of Human Rights (UDHR). Considered the utmost expression of human rights accomplishment, its drafting took stock of the empowering movements of women before and during the Second World War. The declaration drafting was steered by Eleanor Roosevelt, the first president of the Human Rights Commission. Other relevant women were also decisive for the declaration's defence of women's rights, replacing the phrase "All men are born free and equal" with "All human beings are born free and equal" in draft article 1. Finally passed as UN Assembly Resolution 217 (III) on 10 December 1948, article 2 UDHR reads as follows: "Everyone is entitled to all the rights and freedoms outlined in this Declaration, without distinction of any kind, such

[9] Short of words, this paper will not address the evolution of gender parity commitment at the regional level, although some literature references on the European Union are worth mentioning: Hoskyns, Catherine, *Integrating Gender: Women, Law and Politics in the European Union*, Verso, 1996; López Méndez, Irene, "El nuevo marco comunitario para la igualdad de género (2001–2005)", *Mujeres y Cooperativismo*, n° 2, 2000; Pollack, M. A. and Hafner-Burton, Emilie, "Mainstreaming gender in the European Union", *Journal of European Public Policy*, 2020, pp. 432–456; Booth, Christine, and Bennett, Cinnamon, "Gender Mainstreaming in the European Union Towards a New Conception and Practice of Equal Opportunities?", *European Journal of Women's Studies*, vol. 9, nº 4, 2002, pp. 430–446; Kantola, Johana, *Gender and the European Union*, Palgrave Macmillan, 2010; Petit de Gabriel, Eulalia W., "Mujer y tribunales internacionales: el difícil camino hasta la toga", in J. D. Ruiz Resa, ed., *Las mujeres y las profesiones jurídicas*, Dykinson, 2020, pp. 128–137.

as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status".

In this very line, the second subsidiary organ established by the ECOSOC, the CSW, was to promote the rights of women in the political, social, economic, and educational fields. Yet the CSW was not defined in a gender-balanced way as per its statutory composition rules.[10] The CSW boosted the negotiation of a singular convention, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by the UNGA in 1979 and in force since 3 September 1981.[11] Until today, the CEDAW remains the most relevant piece of universal hard law in the field, binding on 189 states. The convention is supplemented through an additional protocol with a specific mechanism of control over states parties (the Committee on the Elimination of Discrimination against Women, CEDAW Committee) and is open to individual complaints after the 1999 Optional Protocol (currently ratified by 114 states), in force since December 2000.[12] In this vein, non-discrimination based on gender is included in almost every international treaty on individual human rights.

Further normative efforts about gender justice have been channelled alternatively through soft law, non-binding, and legal instruments. On this wise, the ECOSOC's CSW has promoted the four major conferences on women convened by the United Nations. The first, in commemoration of International Women's Year at the request of the UNGA (Mexico City, 1975).[13] The second was the World Conference of the United Nations Decade for Women (Copenhagen, 1980), achievements of which were reviewed in a third conference (Nairobi, 1985). The fourth, the 1995 Beijing Conference (1995), where a Declaration and a Platform for Action were adopted, the follow-up of which was commissioned to the CSW by the ECOSOC.[14] The Beijing Declaration recognised the central role that women should play in leadership,

[10] E/RES/8 (II) of 21 June 1946, not including norms related to gender balance in its own composition.

[11] A/RES/34/180, of 18 December 1979. Article 20.1 amendment was adopted on 22 December 1995, although it is not still in force, to allow for a flexible duration annual meeting of the committee.

[12] A/RES/54/4, of 15 October 1999.

[13] A/RES/310 (XVII).

[14] E/RES/1996/6.

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conflict resolution, and the promotion of lasting peace, going beyond the perspective of non-discrimination. Indeed, the Beijing Platform for Action established the principle of equal participation of women and gender balance of women and men in decision-making for the first time, linking women's access to decision-making to the notion of justice and democracy, including, also for the first time, a reference to the judiciary.[15]

A brand-new phase was presented in 2000 with the full involvement of the UNGA and the UNSC. This last one jumped into the gender agenda, adopting a key resolution on women, peace, and security (Resolution 1325), which has been seized by gender mainstreaming since.[16] In parallel, the UNGA decided to carry out a five-year evaluation of the Beijing Platform for Action.[17] From then on, every five-year evaluation (2005, 2010, 2015, 2020) has been led by the CSW.[18]

That very year, the UNGA approved a development agenda for 2015, the Millennium Development Goals (MDGs),[19] among which MDG #3 aimed at "promot[ing] gender equality and women empowerment". Having fallen short of the awaited results, MDGs were renewed through the Sustainable Development Goals (SDGs), adopted as per the UNGA Resolution 70/1, 21 October 2015.[20] SDG #5 sets a higher threshold, requiring to "achieve gender equality and empower all women and girls", and specifically calling to "ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life".

From hard law obligations under human rights law on "sex equality" (both under the UDHR and the CEDAW) to soft law commitments and achieving gender equality and the empowerment of women, the path towards gender-

[15] United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, Strategic Objective G1, 192 (a) and 232 (i).

[16] S/RES/1325, 20 October 2000, on women and peace and security. It has been followed by a trend of UNSC resolutions.

[17] A/55/341, 30 August 2000, Women 2000: Gender Equality, Development and Peace for the Twenty-First Century.

[18] Review documents and reports can be found at the sites https://www.unwomen.org/en/csw and https://beijing20.unwomen.org/en.

[19] A/RES/55/2, 18 September 2000.

[20] A/RES/70/1, 21 October 2015.

balanced international legal bodies is defined by the (in)opposability of those general rules – both hard and soft.

2. The Ultimate Test for Gender Equality: Gender Balance at the Core of International Law Application Mechanisms

The legal scholar and the practitioner alike would rather apply a hard law rule than a soft law one. Yet the human rights perspective on gender non-discrimination is probably at first sight not the best tool to achieve a gender-balanced composition in international legal bodies, although human rights treaties are indeed hard law rules.

The UDHR – whose general international law character is today undisputed[21] – the CEDAW, and other human rights instruments, including gender non-discrimination prohibitions, are prescriptive rules operating mainly as reactive tools. They are supposed to proscribe, and subsidiarily establish procedures to shape the responsibility for, an occurring/real discrimination. They are not conceived as proactive tools to foster a more gender-balanced composition of international bodies and, as such, mainstreaming gender into the international justice and adjudicating system. In other words, the human rights approach is more negative than a proactive reading on gender equality.

The human rights advent to gender equality relies on a premise, that of the right of the individual as opposed to the obligation of the state. This approach falls short when considering the (in)opposability of human rights treaty obligations to international organisations. International organisations are normally not signatories of human rights instruments,[22] thus they are not formally bound to comply with those treaties. Therefore, the individual

[21] The customary international law character applies, if not to all articles, to most of its norms, including those on gender non-discrimination. See Committee on the Enforcement of Human Rights Law, "Final Report on the Status of the Universal Declaration of Human Rights in National and International Law", in *Report of the Sixty-Sixth Conference, Buenos Aires*, International Law Association, 1994, p. 525; Hannum, H., "The Status of the Universal Declaration of Human Rights in National and International Law", *Georgia Journal of International and Comparative Law*, vol. 25, 1995, pp. 287–397.

[22] Rare exceptions can be accounted for: the EU is a party to, and only to, the Convention on Human Rights of the Persons with Disabilities, 13 December 2006, which it signed on 30 March 2007 and to which it has been formally bound since 23 December 2010. In any case, the

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cannot, strictly speaking, claim for the rule to be fulfilled by an international organisation on the sole basis of those instruments. In the same vein, the individual cannot deduce a claim against an international organisation through the bodies created specifically by those instruments.

Similarly, the SDGs, despite being soft law rules setting objectives and not obligations, are conceived as state goals, according to the wording of the Declaration of the Heads of State and Government and High Representatives adopted in the UNGA Resolution. The states, "On behalf of the peoples we serve", "commit ourselves to working tirelessly for the full implementation of this Agenda by 2030". Although some international organisations are expressly mentioned as relevant stakeholders for certain SDGs or specific objectives – such as the International Labour Organization, the World Trade Organization, or specific UN programs – a general reference to all international organisations is only made once, expressly in paragraph 28, related to consumption patterns; the United Nations or the UN system is only referred to when addressing the Global Partnership for Sustainable Development as a means of implementation[23] or in terms of support to state commitments.[24]

While international organisations are the expression of the concerted will of their members, to consider that any organisation is committed to the SDGs only because its members are becomes insufficient and discouraging. From that perspective, situations may arise concerning non-governmental organs, such as independent or autonomous agencies. Nevertheless, there are no

EU has not accepted the Optional Protocol, conferring competence to the Committee on the Rights of Persons with Disabilities to receive and consider individual communications.

[23] A/RES/70/1, 21 October 2015, para 39, "The scale and ambition of the new Agenda requires a revitalized Global Partnership to ensure its implementation. We fully commit to this. This Partnership will work in a spirit of global solidarity, in particular solidarity with the poorest and with people in vulnerable situations. It will facilitate an intensive global engagement in support of implementation of all the Goals and targets, bringing together Governments, the private sector, civil society, the United Nations system and other actors and mobilizing all available resources", and again in paras 60 and 65.

[24] *Ibidem*, para 46: "We underline the important role and comparative advantage of an adequately resourced, relevant, coherent, efficient and effective United Nations system in supporting the achievement of the Sustainable Development Goals and sustainable development", although excluding any regional organisation, except for an eventual decision as forum for the regional follow-up, according to para 81.

mechanisms for implementing, much less adjudicating, non-compliance with the goals, as they are merely soft law commitments.

More generally, at an axiological and logical level, there is some contradiction in the UN and other international organisations promoting SDGs, for they fail to commit themselves to them in a clear, upright manner. International legal bodies are a disparate universe as per origin, regulation, and competencies. The relevance and impact of their decisions are often worldwide and of the utmost importance. Therefore, the way they tend to implement the SDGs is not only a beacon but a sign of the strong commitment of the international community itself to those goals.

The accomplishment of gender parity and empowerment of women should be, if not obvious, at least a means to several ends across international legal bodies. Having been a fundamental concern in international human rights law – subsequently spreading to international development and cooperation law as the SDGs highlight, or to international peace and security law, after UNSC Resolution 1325 on women, peace, and security – gender parity and gender balance should be a cornerstone of international legal bodies as most of them, if not all, qualify as dispute settlement means and therefore as peacekeeping and peace-enforcing bodies through the rule of law, whose members or aspiring members enjoy a fundamental human right to non-discrimination.

Moving from a non-discrimination and equality approach to gender mainstreaming is one of the many faces of the evolving nature of the efforts towards a more gender-balanced international society. Those continued and long-lasting efforts are but an indication that results are not met or, at least, are not up to the challenges.

III. STRATEGIES FOR GENDER-BALANCED INTERNATIONAL LEGAL BODIES

The most difficult thing is the decision to act.
The rest is merely tenacity.
—Amelia Earhart (1899–1937)

Is there really an unbalanced state of the art when it comes to gender distribution in the composition of international legal bodies? If so, has any action been taken at the normative level to redress it or at least to struggle for its adjustment? We will illustrate this concern through figures (section 1), so that the scarce normative attempts to redress this unbalance can be

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fully estimated for their quality, as there have only been a small number of good practices aimed at redressing the (un)balanced composition previously described, both inside and outside the scope of the UN structure.

Two different approaches will be highlighted. The first one relies on an obligation of means, with the candidate nomination process conditioned by gender balance rules, although the result of the election process is not controlled in terms of gender balance (section 2). The second one is defined by establishing an obligation of result, creating a gender balance outcome requirement in the rules governing the composition of the institution concerned (section 3).

1. The Numbers Speak for Themselves

Most policy documents referring to gender issues from different international organisations mainly address cooperation with states to fill national gaps in terms of gender balance, without addressing the imbalances in the organisation itself.[25] The United Nations is probably one of the most visible cases of an organisation showing sensitivity towards gender balance, and it has come under scrutiny in this regard only over the last thirty years.

The UN Charter originally draw an internal standard for eligibility to UN organs back in 1945, as per article 8, in the following terms: "The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs."

Despite the hard law character of the provision – and perhaps because of a rather passive, instead of a proactive, wording in this article – decades went by before the organisation took steps to affront the disparate role of women inside the UN, and more specifically in bodies entrusted with legal competences. Besides, the individual perspective – gender equality – in the article was not adequate to acknowledge the broader problem, gender balance.

Since 1994, the consecutive UN Secretary-Generals (UNSGs) have undertaken measures in relation to gender equality in the organisational structure of the UN. An initial step was taken through the creation of the UN

[25] See, for instance, the Council of Europe Gender Equality Strategy 2018–2023, through the annual reports, at https://www.coe.int/en/web/genderequality/gender-equality-strategy. For the EU, see the Gender Equality Strategy, 2020–2025, at https://ec.europa.eu/info/policies/justice-and-fundamental-rights/gender-equality/gender-equality-strategy_en.

Focal Point for Women in 1994, answerable to the Assistant Secretary-General for Human Resources in the Department of Management, Strategy, Policy and Compliance. Based on UNSG reports,[26] the UNGA has been addressing the situation of women in the UN since 1998.

The very UNSC acknowledged the problem in 2000, with Resolution 1325, in relation to decision-making levels at "national, regional and international institutions", and specifically referring to "mechanisms for the prevention, management, and resolution of conflict".[27] Along with the renowned resolution, the UNSC created an Informal Experts Group on Women, Peace and Security (IEG), although more focused on a gender-alert policy than on serving as a tool for gender equality.

Within the institutional reform promoted in 2001,[28] UNAG created UN Women in 2010,[29] into which the UN Focal Point for Women has been integrated. UN Women, nevertheless, is consecrated to the promotion of gender parity at the domestic rather than at the international level, which is relentlessly forgotten. The issue has also involved the CEDAW Committee, which, through its recommendations, has gradually been embracing the normative standard of parity representation in an increasing number of domains in its discussion with member states.[30]

Nevertheless, neither the UNSC, the UNGA, UN Women, nor the CEDAW Committee has specifically focused on the internal composition of international legal bodies. They have remained aligned with the state obligation perspective, which is characteristic of the human rights traditional normative approach on gender equality and not on gender balance.

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[26] A/53/376, 14 September 1998; A/54/405, 27 September 1999; A/55/399, 19 September 2000; A/56/472, 15 October 2001; A/57/447, 2 October 2002; A/58/374, 17 September 2003; A/59/357, 20 September 2004; A/61/318, 7 September 2006; A/63/364, 18 September 2008; A/65/334, 9 September 2010; A/67/347, 4 September 2012.

[27] S/RES/2242 (2015), paras 1 and 3.

[28] A/RES/55/69 on the "Improvement of the status of women in the United Nations system".

[29] A/RES/64/289, "System-wide coherence", paras 49–88, by way of statutes of the entity.

[30] Rubio-Marin, Ruth, "Women's Participation in the Public Domain under Human Rights Law: Towards a Participatory Equality Paradigm Shift?", in Rubio-Marin and Kymlicka, *Gender Parity and Multicultural Feminism*, pp. 66–96.

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Therefore, no major improvement concerning the UN structure had been reached[31] when Secretary-General António Guterres arrived in office. While voices rose for a female Secretary-General, Guterres committed himself to achieving gender parity in the senior leadership levels of the UN by 2021 and across the organisation at all levels by 2028. A strategy – with a parity target at 47–53 – was adopted,[32] which has already delivered impressive results, thus showing the difference that political will can make. It is notable that the first target was achieved two years ahead of schedule, with parity in full-time positions such as secretary-generals, assistant secretary-generals, and resident coordinators achieved for the first time in seventy-five years, in addition to the highest number of women in leadership in peacekeeping missions ever. Very interestingly, a gender parity dashboard with public data has been created and kept updated,[33] which, considering the existing opacity of gender data in international legal bodies, is an awe-inspiring improvement.

Alongside with civil organisations' campaigning on the topic,[34] and beyond the UN administrative structure, it has been up to the HRC to raise the curtain and show the real situation inside the human rights organs and bodies, although previous concerns on the composition of treaty bodies had been expressed by the UNSG before.[35] In 2019, the HRC requested its Advisory Committee, assisted by relevant and meaningful stakeholders' input on the situation,[36]

[31] Office of the Special Adviser on Gender Issues and Advancement of Women (OSAGI) and Office of the Focal Point for Women (OFPW), "Gender balance strategy for the United Nations Secretariat: An action plan", 2010.

[32] United Nations' system-wide strategy on gender parity. A twenty-year old staff administrative instruction on temporary special measures was also renewed on 6 August 2020 (see ST/AI/2020/5, Administrative instruction, "Temporary special measures for the achievement of gender parity", superseding the instruction of 21 September 1999, SG/AI/1999/9).

[33] https://www.un.org/gender/content/un-secretariat-gender-parity-dashboard.

[34] Since 2014, with the creation of Women at the Table, several civil society organisations have campaigned in support of women involvement in decision-making at all levels, including the international arena. GQUAL (a campaign for gender parity in international representation) is a clear example of monitoring, data gathering, and campaigning.

[35] At least, shown in 2016 (A/71/118, para 80 and annex XVIII), 2018 (A/73/309, para 87 and annex XXIV), and 2019 (A/74/643, annex XXIII).

[36] Input from states, stakeholders, NGOs, and scholars can be found at https://www.ohchr.org/en/hr-bodies/hrc/advisory-committee/levels-representation-women.

along with good practices by states, its involvement in nominating, electing, and appointing candidates to ensure a balanced gender representation.[37]

A report entitled *Current Levels of Representation of Women in Human Rights Organs and Mechanisms: Ensuring Gender Balance* (2021) was submitted to and approved by the HRC.[38] The report displays figures on human rights treaty bodies, as well as special procedures of the HRC and the very HRC Advisory Committee.[39] For the human rights treaty bodies, the document outlined that the average of women participation in these bodies was 31%, excluding the CEDAW Committee (where women held up to 90% participation) and three other committees where representation at least reached parity (Committee on the Rights on the Child, at 50%; Subcommittee on Prevention of Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment, at 52%; and the Committee on the Rights of Persons with Disabilities, at 67%). It is noteworthy that family, children, and women are topics associated with a higher representation of women in their respective treaty bodies.

As for the special procedures, women held 17 out of 30 working group positions, being a minority in all working groups except the Working Group on Discrimination against Women and Girls (all five members being women in this case). Out of 44 thematic mandates, women occupied just 16% of individual mandate positions. In relation to country mandates, only 18.5% were occupied by women (two out of 11). There were still 11 individual mandates never held by a woman in 2021.

Finally, the very Advisory Committee reached a minimum women representation threshold at 16.7% in 2017–2018, although higher rates have been recorded, scaling up to 22.2% in 2003 and 2019, and 33.3% in 2011. A temporary maximum female participation was reached in 2013, at 37.8%. In 2020, a higher women representation threshold has been attained, at 38.9% (seven out of 18 members were women). The trend is one of variability, and not necessarily one of accomplished and progressive increase in gender balance, as significant drawbacks appear to exist.

The HRC advisory report does not touch upon the key figures of other international legal bodies, such as international courts or the ILC. Data for all

[37] A/HRC/RES/41/6, 19 July 2019, para 16.

[38] A/HRC/47/51, 21 May 2021.

[39] See paras 9–17 and, for a more detailed analysis, annex II, accompanying the report.

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these other bodies must be collected through a complex look at their nominal composition, as most of the international legal bodies do not offer segregated information by gender.[40] On numerous occasions, out of general statistics or precise information in the respective bodies' web pages and directories, it is necessary to check if any given name corresponds to a male or female member, given that the different cultural contexts may difficult the process. Scholarly literature shows figures corresponding to different time frames.[41] We will refer now to the participation rates for tribunals in the time frame offered by the 2021 HRC Advisory Committee's report for human rights treaty and non-treaty bodies.

In early 2020, the ICJ counted three female judges out of 15 (20%); the ICC, six out of 18 (33%); the IRMCT, six out 25 (24%), the ITLOS, three out of 21 (14,3%); the IACtHR, one out of six (14.3%); the ECtHR, 16 out of 47 (34%), the CJEU (including both the Court of Justice and the General Court), 20 out of 77 (26%); and the ILC, four out of 34 (11.7%). The exceptional case was that of the African Court on Human and Peoples' Rights, the AfCHPR, with six women out of 11 members (54.5%).

Generally speaking, figures are mournful. Take, for example, the ILC: created in 1947, the first female candidates were nominated in the 1961 and 1991 elections. While the membership of the commission has been overwhelmingly male since its inception, the General Assembly elected the first two female members of the commission in 2001. Female members were elected in 2006, 2011, 2016, and 2021, with the latter election increasing the female composition at the ILC up to a historical 14.7%, starting office on 2023.

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[40] GQUAL maintains a data collection page, which has been recently updated in March 2022, at http://www.gqualcampaign.org/current-composition/. For European courts, data are collected in the Gender Statistics Database of the European Institute for Gender Equality (https://eige.europa.eu/gender-statistics/dgs), the specialised EU agency on gender. The agency produces a gender equality index, too, analysing gender performance for different indicators in the 27 EU member states and EU institutions. There is no such statistics for the Council of Europe.

[41] Krsticevic, Viviana "Gender Equality in International Tribunals and Bodies: An Achievable Step with Global Impact", *GQUAL*, September 2015; Grossman, "Achieving Sex-Representative International Court Benches", pp. 82–86; Robertson, Anderson, and Burke, *Women at the Table*, annex, part I.

In the very limited scope of this reflection, we should underline that these gender-related results, which present different explanations and causes, are also dependent on the legal rules applied for nomination and election to those legal bodies, which very often take no consideration of the gender balance question. Nevertheless, some efforts are made for redress in terms of the obligation of both means and result.

2. Ancillary Rules to Support Gender-Balanced Nominations: Creating an Obligation of Means

A differentiation should be introduced between those legal bodies and organs for which candidate nomination is an individual decision and those for which nomination is dependent on proposals by member states. The first one is represented by human rights special rapporteurs and working groups appointments by the HRC. The second group is represented by tribunals (ICJ, ICC, ITLOS, IACtHR, ECtHR, and AfCHPR), human rights treaty bodies, and other organs such as the ILC or the HRC Advisory Committee.

Within the very first category of bodies – where nominations are or can be submitted directly on an individual basis – an interesting example of ancillary rules is offered by the guidelines for the selection and appointment process of special procedures holders (special rapporteurs and working group members). This set of guidelines is to be applied by the HRC consultative group (intergovernmental composition),[42] when nominating the roster of three candidates, and by the HRC, when appointing one candidate (after the president of the HRC presents a recommendation). The working method was defined by the HRC in 2007[43] and recently reinforced in 2020 through the president's statement on the methodology implemented by the Consultative Group of the Human Rights Council.[44] Since 2007, gender balance has been granted the same relevance as "equitable geographic representation" and "appropriate representation of different legal systems". These soft rules were

[42] It is composed of five high-level representatives nominated by each of the five regional groups and serving in their personal capacity, and its function is to consider the applications received and shortlist candidates for interviews.

[43] Human Rights Council resolution 5/1 of 18 June 2007, paras 3.1.k (Principles), 40 (Special Procedures), 72 (Human Rights Council Advisory Committee), 91 (Working Group on Communications), and 96 (Working Group on Situations).

[44] President's statement PRST OS/14/2 of 16 December 2020, on Methods of work of the Consultative Group of the Human Rights Council, para. 31.

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both directed towards the nomination and appointment process. Nevertheless, there was no obligation of result and no surveillance mechanism on the proper application of the criteria, neither back in 2007 nor since the renewed guidelines were put in place in 2020.

In the second scenario, where nominations come through states only, there have been some in-house developments to enhance or induce a more gender-balanced composition through ancillary rules orienting the nomination process.

In that vein, the case of the Council of Europe's efforts to establish a fairer gender composition at the ECtHR is meaningful.[45] According to article 22 of the European Convention on Human Rights, "The judges shall be elected by the Parliamentary Assembly concerning each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party".

Although the European Convention itself does not contain any provision on gender,[46] since 2004, the Parliamentary Assembly has requested that the three-candidate national proposals to be gender balanced.[47] After a 2008 ECtHR advisory opinion requested by the Committee of Ministers,[48] and as Malta presented a male-only list alleging it had taken all steps towards gender balance without success, the Committee of Ministers approved a set of guidelines on the selection of candidates for the position of judge at the ECtHR in 2012, including both the gender-balanced requirement and the previous public call at the national level.[49] This set of rules includes a flexibility clause when a contracting party, having taken all the necessary and appropriate

[45] For an analysis of the policy constraints and possibilities of the Council of Europe approach, including the background and tensions behind the process of adoption of the diverse documents on which it is framed, see Hennette Vauchez, Stéphanie, "The Rule and the Politics of Gender Balance at the European Court of Human Rights", *European Journal of International Law*, vol. 26, nº 1, 2015, pp. 195–221.

[46] Criteria for office are set in article 21 of the European Convention on Human Rights (ECHR), not including gender balance, although setting limits on age.

[47] AS/Res (2004)1366, as modified by its resolutions 1426 (2005), 1627 (2008), and 1841 (2011).

[48] Resolution CM/Res(2010)26, first advisory opinion ever delivered by the ECtHR according to the procedure described in article 47.

[49] Adopted by the Committee of Ministers on 28 March 2012, CM(2012)40-final, as amended on 26 November 2014 by CM/Del/Dec(2014)1213/1.5-app5.

steps, is unable to present candidates of both sexes (the Malta situation). The committee may then consider a single-sex list, even when the candidates do not belong to the under-represented sex.

Since 2010, national lists are submitted to the Committee of Ministers' Advisory Panel of Experts on Candidates for Election as Judge to the European Court of Human Rights[50] before the election by the Parliamentary Assembly. After the candidate's national proposal has been cleared by this advisory panel, the Parliamentary Assembly submits it to a Committee on the Election of Judges before the votes are cast.[51] This committee counts twenty-two seats of parliamentary extraction, including the chairpersons of the Committee on Legal Affairs and Human Rights (a man, in 2022) and the Committee on Equality and Non-Discrimination (a woman, in 2022), who are ex-officio members. Sessions are not public (held in camera). The composition of the Committee on the Election of Judges counted, dismally, with seven female members (31.8%) in 2022.

As it is, the legal model to introduce both publicity and gender balance is a soft law model, not hard rules. While the guidelines are considered non-binding at the national level by courts,[52] they are incidentally "enforced" internationally through the potential rejection of national rosters which fail to comply with gender balance or its exception thereof, either at the stage of consultations at the Advisory Panel of the Committee of Ministers or by the Parliamentary Assembly itself, by recommendation of the assembly's special committee on the election of judges.

The model sets ancillary rules, which can be perceived as an obligation of result concerning the nomination of candidates in a quite successful way at the Council of Europe level, although, as said, not enforceable by an interested individual before national tribunals. Nevertheless – and from the broader

[50] Resolution CM/Res (2010)26.

[51] Memorandum prepared by the Secretary General of the Assembly on the Procedure for the election of judges to the European Court of Human Rights as of 6 July 2022, SG-AS (2022) 01Rev4.

[52] For example, the Spanish Supreme Court has considered the Council of Europe's Committee of Ministers guidelines merely soft law, and therefore, it has not provided for legality review on that sole basis. Moreover, the same court has considered that the nomination for the position of ECtHR judge is an act of government, i.e. a political act not subject to judicial review. See STS 2139/2017, 31 May 2017, ECLI: ES:TS:2017:2139.

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perspective of the election and composition of the court – these guidelines operate as an overall obligation of means, for the Parliamentary Assembly of the Council of Europe is not obliged to consider the gender-balanced composition of the overall court when voting on the three-candidate national proposals. This shortcoming when operating on the basis of these ancillary rules is to be compared to the effect a true obligation of result can have.

3. Statutory Rules for a Gender-Balanced Outcome: Finally, an Obligation of Result

As mentioned, the implementation of a non-discriminatory clause affecting the composition of legal bodies can be traced back to the UN Charter – its predecessor, the Covenant of the League of Nations, failed to include such a clause. Non-discrimination, besides being an individual right, became opposable to the international organisation as such in regard to the composition of its organs, principal or subsidiary, as expressly mandated by article 8 of the UN Charter. Therefore, the legitimate aspiration of every individual to take part in any UN organ, despite their sex/gender, is supported by a correlative obligation of the United Nations not to discriminate.

Incongruously, the statutory composition rules of most of the legal bodies within and outside the UN system do not foresee a non-discrimination clause. A few exceptions are to account for, such as non-discrimination by nationality – albeit not gender – worded in article 2 of the ICJ Statute.

Still, statutory composition rules often settle criteria for a balanced composition, such as ensuring the representation of the principal international legal systems or equitable geographical distribution, expressly or through a regionalised system of member elections, as in the cases of the ICJ, ITLOS, ICC, ILC, AfCHPR, guaranteeing this geographical requirement through a compartmentalised voting system – i.e. creating separate election groups for different geographical regions with a guaranteed number of seats for every group, and sometimes even a rotating one.[53]

Exceptionally, three out of ten of the human rights treaties include gender balance among the criteria for their respective bodies' composition, along with adequate geographical or legal representation criteria. The criteria are

[53] Indirectly in art. 4 ICJ Statute, expressly in art 2.2 ITLOS Statute; art. 36.8 ICC Statute; art. 8 ILC Statute only concerning regional distribution; art. 14.2 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the AfCHPR.

established as a consideration to be taken into account by member states when electing individuals to the respective body, and not as a requisite for states to consider when nominating the candidates' roster. See, for instance, article 5.4 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002, in force 22 June 2006),[54] article 34.4 of the Convention on the Rights of Persons with Disabilities (2006, in force 3 May 2008),[55] and article 26.1 of the International Convention for the Protection of All Persons from Enforced Disappearance (2006, in force 23 December 2010).[56]

Nevertheless, the gender balance recommendation is not guaranteed in terms of results by any specific system of appointment. Although there are precedents guaranteeing the regionalisation of the bodies' composition, when it comes to gender, the criterion falls short of a specific means towards gender equality achievements – for instance, forming separate groups for every gender election.

A similar pattern can be applied to the ICC (1998, in force 1 July 2002). As a departing point, art. 36.8.a.(iiii) of the Rome Statute establishes that states must respect "a fair representation of female and male judges" when electing members of the court by secret ballot at a meeting of the Assembly of States Parties.

Again, the Rome Statute neither sets a specific outcome for gender-balanced composition nor establishes a system of guarantees for this "fair representation" outcome. Being a secret election, it is not a straightforward system for reaching the desired fair representation. Nevertheless, the Assembly of States Parties has developed hard rules to guarantee gender diversity at both nomination and voting stages to be applied to the very first election, paralleling or equating the gender-balance criterion with the regional distribution one from 2002.[57] For the nomination, multiple extensions of time limits are foreseen to reach a minimum requirement, consisting of the nomination of twice

[54] United Nations, *Treaty Series, vol. 2375*, New York, 2010, with 91 states parties as of July 2022.

[55] United Nations, *Treaty Series, vol. 2515*, New York, 2011, with 185 states parties as of July 2022.

[56] United Nations, *Treaty Series, vol. 2716*, New York, 2015, with 68 states parties as of July 2022.

[57] A gender diversity criterion was already observed in guidelines for the initial election of all the 18 judges of the ICC, foreseeing the extension of the nomination period in case a minimum of 10 candidates of any given gender was reached. There was a similar rule for geographic groups. See ICC-ASP/1/Res.2, Procedure for the nomination and election

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the number of seats than any other gender. For the voting, a mathematical formula is foreseen to adjust the minimum required number of eligible judges of the under-represented gender, even reaching a one-gender list for judicial vacancies when the balance of the court is not reached, since the reform of said procedural rules in 2004.[58]

A similar path has been followed by the African Court on Human and Peoples' Rights (AfCHPR), whose foundational protocol was adopted in 1998 (in force 25 January 2004), the very same year that the ICC Statute was also adopted. The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights sets forth in article 14, paragraph 3, that "In the election of the Judges, the Assembly *shall ensure* that there is *adequate gender representation*" (our emphasis).[59] Therefore, the African Court is prescribed to be gender balanced or, more properly, to act in a manner which, at a specific time entails an "adequate gender representation". Adding to the hard law prescription of an outcome – "shall ensure" – there is an institutional guarantee to that effect, as the assembly of the organisation is expressly deemed responsible for reaching the requested outcome. The protocol thus combines a gender outcome requirement and an institutional guarantee to it.

Taking into account that the election takes place in the assembly by secret ballot, some further normative development was required to guarantee a gender-balanced composition of the court. This is the reason why the Executive Council of the African Union, answerable to the assembly, adopted in 2016 a Decision on the Modalities on Implementation of the Criteria for Equitable Geographical and Gender Representation in the African Union Organs.[60] According to this decision, the eleven members of the court shall be elected in five subregional groups, with two members from every group plus one floating/rotating seat. According to paragraph 2.iii) of the decision, "at least one (1) member from each region shall be a woman". Therefore, a

of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court, 9 September 2002, rules 12 and 13.

[58] ICC-ASP/3/Res.6, Procedure for the nomination and election of judges of the International Criminal Court, 10 September 2004, rules 11, 20–23, and 27.

[59] Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and People's Rights.

[60] Doc. EX.CL/953 (XXVIII) (2016).

minimum of five women out of the eleven members is guaranteed by hard law rules. Moreover, the decision requests the "African Commission to ensure the scrupulous implementation of this Decision".

The array of possible legal means to redress the unbalanced gender composition of international legal bodies is not exhausted by those already existing, as described. Nevertheless, a balance should be drawn, as most of the described rules – ancillary or statutory – are contemporary, specifically from 2004 onwards. As a result, we will offer some very recent data to present some conclusions on the evolution and actually existing solutions, leaving space for further proposals.

IV. ARE WE THERE YET? FROM INTENT TO OUTCOMES

Women belong in all places where decisions are made.
—Ruth Bader Ginsburg (1933–2020)

It is yet to be seen whether conclusions can be drawn on a changing reality with regard to gender balance in international legal bodies. However, we will present the most recent changes in the composition of different bodies (section 1) so we can establish the (in)existing impact (section 2) of the different types of rules analysed above.

1. Coming to Terms with the Challenge

During the last two years, an increased participation rate of women in international legal bodies has been doubtless verified, if not for every one of them at least for a significant number. Be that as it may, a differentiation can be observed for those bodies in which a gender balance has been achieved, those which are following a trend towards balance, and those which have cast the opportunity away.

The African Court on Human and Peoples' Rights epitomises the success of gender balance. It has overreached adequate female participation since 2018. Nevertheless, the African Court is still struggling to reach a gender balance when it comes to power distribution, as key positions like the presidency have only been held by men over these last four years.[61]

[61] Jarpa Dawuni, Josephine, "Beyond the Numbers: Gender Parity on the African Court on Human and Peoples' Rights – A Lesson for African Regional Courts?", *IntLawGrrls* (blog), 28 August 2018; Jarpa Dawuni, Josephine and Adjolohoun, Sègnonna H., "The African Court:

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Following the African success trend, the ICC has also been recognised as a leader in conquering gender balance.[62] The December 2020 renovation guaranteed a gender-balanced composition of 50% female representation from 11 March 2021 through 10 March 2027. This equilibrium will be maintained independently of the results of the partial renovation elections to be held in 2024, which can only increase the ratio of women. It would be important to do so, for the 2027 elections could otherwise end up undermining the objectives attained and, therefore, frustrating the express mandate of the ICC Statute.[63]

The path to equilibrium is steadily being set for the special procedures mandates holders. While updating figures is very difficult, as there are appointments for the non-treaty human rights bodies every three months, the HRC Consultative Group has started to publish a document containing statistics of mandates holders both for the regional and the gender criteria since 2020.[64] This very action (gender composition figures for actual and historical records) is already an improvement, which should be followed by the rest of the international legal bodies.

The latest updated statistics before submission of this paper indicated that, as of May 2022,[65] the distribution by gender was 50/50 – that is, gender parity (stricter than gender balance, which currently finds a 40/60 ratio acceptable, whichever the prevailing gender). The female percentage is equated to the male participation rate for African mandates holders, whereas it is reduced for the Group of Latin American and Caribbean Countries (GRULAC) and Asian-Pacific states. The presence of female mandates holders from the Group of Eastern European States and the Group of Western European and Other States, however, is higher than that of men.

Another straightforward figure encompassing the path to equilibrium in human rights special procedures is prompted by an analysis of the nominations

From the Politics of Gender to the Gender of Politics?", *African Women in Law* (blog), 25 May 2021.

[62] The 2003 initial election of the court resulted in seven out of 18 seats (39%) granted to female judges, although the gender balance decreased in successive elections.

[63] Petit de Gabriel, Eulalia W., "Por fin, paridad en la CPI", *aquiescencia* (blog), 30 December 2020.

[64] As required by the Statement by the President's PRST OS/14/2 on Methods of work of the Consultative Group of the Human Rights Council, 16 December 2020, para 29.

[65] Statistics of Current Mandate Holders (as of May 2022) by geographic region and gender.

held during the 50th session of the HRC (June–July 2022), when six out of eight mandates holders' appointments were granted to female candidates.[66]

Significantly enough, out of the eleven mandates never held by a female candidate – as stated by the gender report of the HRC Advisory Committee of May 2021[67] – four of them have undergone new appointments during last year (and up to July 2022). In all four cases, a woman has been retained as mandate holder, including a case for which the president of the HRC decided to propose the second best-considered candidate – a woman – instead of the Consultative Group's best candidate, a man. The president of the HRC stated that

> Taking into account not only gender balance within the mandate, which has been held by six men since it was created but also the importance of the gender perspective in the implementation of the mandate and the need for a heightened awareness of the particular vulnerabilities of specific groups, such as women and children.[68]

This is the case of the newly appointed Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment.[69] Along with her, the HRC has nominated other female candidates for the first time

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[66] Appointments at the 50th session of the Human Rights Council (13 June to 8 July 2022).

[67] A/HRC/47/51, para 14.

[68] President's list of candidates proposed for eight vacancies to be filled at the 50th session of the Human Rights Council of 2 June 2022. No comment will be made on the female connection criterion for "the particular vulnerabilities of specific groups, such as women and children", which reinforces a certain social perception of women's role in international legal bodies and social issues. The president of the HRC at the moment was a man. More importantly, it is not the first occasion in which the order of candidates established by the Consultative Group has been altered for a female candidate to be elected, "taking into account gender balance". It happened previously with the nomination to the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), a body composed of members from Central and Eastern Europe, the Russian Federation, Central Asia, and Transcaucasia (49th session of the HRC, 28 February to 1 April 2022). An alteration of the proposal made by the Consultative Group to the HRC has taken place in other occasions, although based on the merits and experience related to the mandate. In some of those instances, an advancement of the position of female candidates can be verified from it, yet this is not always the case.

[69] Ms Alice Jill EDWARDS (Australia), appointed at the 50th session of the HRC (13 June to 8 July 2022), the vacancy being due to resignation of the previous mandate holder.

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for the positions of Special Rapporteur on the right to privacy,[70] Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,[71] and Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea.[72] Therefore, the number of historically male-only mandates holders has been reduced to seven.

Upcoming renovations on 2023 and 2024 should follow the same path. Within this comforting trend, deep concerns should nevertheless be shown, as there is also a reverse trend in the composition of those mandates holders related to family issues (women, children, etc.). Those mandates are historically unbalanced, short of male participation. In our opinion, gender balance concerns, non-discrimination rights, and the reinforcement of new masculinities – all require a different approach to those historically (almost) women-only bodies.[73]

Other international legal bodies are also pursuing this trend towards gender balance. There has been a noteworthy change in the composition of the American Court of Human Rights,[74] since the recent regular elections held at the General Assembly of the Organization of American States (November–December 2021) allowed the court to move from one female judge to three female judges (out of seven), reaching therefore a 42.8% female representation.[75] Previous representation was at 14.3%.

Along this very line, although at a slower "speed", the ITLOS and the ICJ have recently increased their female participation. The ITLOS has moved

[70] Ms Ana BRIAN NOUGRERES (Uruguay), appointed at the 47th session of the HRC (21 June to July 14 2021).

[71] Ms Francesca P. ALBANESE (Italy), appointed at the 49th session of the HRC (28 February to 1 April 2022).

[72] Ms Elizabeth SALMÓN (Peru), appointed at the 50th session of the HRC (13 June to 8 July 2022). She was the former rapporteur of the HRC Advisory Committee drafting group on gender balance in human rights bodies.

[73] However, some scholars question whether the balance is to be reached in the committee composition or in the nomination history for a specific state. See BAILLIET, Cecilia Marcela, "A Call for Transparency in Nominations to International Committees and Tribunals", *IntLawGrrls* (blog), 15 March 2016.

[74] BOEGLIN, N., "La elección de nuevos jueces en la Corte Interamericana de Derechos Humanos en este 2021: algunos apuntes", dipublico.org, 16 June 2021.

[75] Organization of American States, 51st General Assembly Press Release E-099/21, 12 November 2021.

from three to five women judges out of 21 justices (from 14.3% to 23.8% female presence on the bench) after the last partial election on 1 October 2020, where seven new judges took office (two re-elected and five newly appointed ones, out of which three were women).[76] From a gender perspective, the balance could have been better, although an improvement has been made. The ICJ's slower advancement is conditioned by extraordinary circumstances – called casual election – as partial regular elections are not due until 2024. A new ICJ female judge was elected on 5 November 2021 due to the passing of Judge Crawford.[77] Discussions have been held over the existence of a practice consolidating the seat for the same nationality candidate as the late judge. Although apparently there is no such expectation or practice,[78] Judge Charlesworth, while born in Belgium, holds Australian nationality, just like Judge Crawford. With an extraordinary background in international law,[79] she defeated an also highly qualified (male) candidate, former ECtHR Judge and president of that court, Linos-Alexandre Sicilianos. Whatever the dominant reasons may be during the election voting process, the fact that the ICJ female rate advanced from 20% (three out of 15) to 26.6% (four out of 15) is a gain, although it still represents a low figure. The recently elected judge ranks among those with a profound feminist commitment to international law.

The recent demise of Judge Cançado Trindade opens the door to a new appointment in November 2022.[80] It remains to be seen what will be the weight granted to the gender composition factor, since no gender rules constrain neither the nomination nor the election process. A new female appointment could take the court to a 33% female participation. Nevertheless, these two last appointments are time-bound to the term of office of the deceased judges (up to 2024 in one case, and up to 2027 in the other). Yet, new opportunities have opened up, since regular elections for five seats will be held in 2023 (for a 2024–2033 term of office). The United States government has recently

[76] International Tribunal for the Law of the Sea (ITLOS), *Election of Seven Members of the Tribunal. Virtual Swearing-in Ceremony to be Held on 1 October 2020* (press release), ITLOS/Press 304, 26 August 2020.

[77] S/RES/2583 (2021), 29 June 2021.

[78] Tzanakopoulos, A., "Casual Vacancies in the ICJ: Is There a Special Practice?", *EJIL: Talk!* (blog), 19 October 2021.

[79] See at the site of the ICJ, the published biography of Judge Hilary Charlesworth.

[80] S/RES/2638 (2022), 22 June 2022.

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supported the nomination of a female candidate by the National Group to the Permanent Court of Arbitration.[81] The seat of the actual ICJ president, American Judge Donoghue, along with that of Judge Charlesworth, will be vacant for that election, and only two female judges will remain in office. Strong support for female candidates will be required to improve gender balance in the ICJ after 2024.

The European turn does not seem to be a quicker path towards gender-balanced tribunals. It almost becomes embarrassing to review ECtHR performance, where the current composition is still 16 women out of 46 members (34% of female judges in 2021), compared to 15 women (31.9%) in 2019, although its specific norms on gender balance are praised.[82] Similarly, the CJEU upscaled from 21.9% in 2019 to 28.6% in 2021, with the European General Court delivering a better gender balance performance in the last two years by increasing the number of female judges from 11 to 16 (from 23.9% to 32%). The European Court of Justice, however, just made it from 18.5% to 22.2%, gaining only one female judge.

Last, but not least, some international legal bodies are reluctant to assume a gender balance upgrade. In this regard, attention should be drawn to the composition of the recently re-elected ILC (in office from 1 January 2023 onwards). The current, non-renewed composition presents four female members out of 34, whereas the new composition will have five women among its members. A very small increase, even though there was a total of eight female candidates, and three of them were not elected. Otherwise, the female rate would have been 23.5%, instead of the current 11.7% and the future 14.7%.

In a somewhat contumacious vein, the composition of the International Residual Mechanism for Criminal Tribunals, regretfully conditioned by an infused automatism, [83] could have benefitted from an increase in female

[81] Blinken, A. J., Secretary of State, "The Nomination of Professor Sarah Cleveland for the International Court of Justice", Press Statement, 23 August 2022.

[82] Alston, P., "Vacancies at the ICJ: Yes, there is a special practice, and it has to cease", *EJIL: Talk!* (blog), 25 October 2021. Nevertheless, a more nuanced balance is drawn in Keller, Hellen, Heri, Corina, and Christ, Myriam, "Fifty Years of Women at the European Court of Human Rights", in Baetens, *Identity and Diversity on the International Bench*, pp. 179–205.

[83] Petit de Gabriel, Eulalia W., "(Dis)paridad en el Mecanismo Residual Internacional de los Tribunales Penales", *aquiescencia* (blog), 8 July 2020.

representation if the seven seats renewed between 2015 and 2019 would have been occupied by female candidates. The current gender balance remains at a low 24% (six out of 25 female judges), although it could have mounted up to 44% (eleven out of 25). Surprisingly, female judges' contributions to the jurisprudence of the criminal tribunals for the former Yugoslavia and Rwanda are well-known and praised in scholarly literature.

It is interesting to confront these changing compositions with the different approaches promoting gender balance in international legal bodies so that a conciliatory course between the individual rights perspective, gender mainstreaming, and the differentiated institutional norms on composition can be identified.

2. Levering Change: New Wine into Old Wineskins

Since 1945, sex/gender equality is enshrined in international human rights law. Nevertheless, these rules are not binding upon international organisations and, while requiring states not to discriminate, are not a proactive means for achieving a gender-balanced composition of international legal bodies.

Soft law development through international conferences, action plans, and programmes channel gender mainstreaming and contribute to establishing goals, such as SDG #5. This constitutes a contemporary avenue to foster a proactive approach to gender parity or gender balance, which may inspire international organisations. Yet it is also a very classic approach to commit states to change their internal politics, rather than addressing international organisations' internal policies. Some international organisations, especially the UN, have undertaken a commitment to internal transformation in order to attain a balanced composition and functioning from a gender perspective.

With regard to international legal bodies, there are few cases in which states are confronted with hard rules to attain gender balanced compositions. When existing, those rules are quite contemporary, like the ICC's or the AfCHPR's statutory composition requirements. But when there is a settled mechanism for compliance with the statutory rule commanding gender-balance, as in the ICC and the AfCHPR, the system works smoothly and the parity objective is reached.[84]

[84] Grossman, Nienke, "Shattering the Glass Ceiling in International Adjudication", *Virginia Journal of International Law*, vol. 56, n° 2, 2016, pp. 222–267.

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In those cases where gender balance lies on ancillary rules – often soft rules such as guidelines governing the nomination process only – the result is not guaranteed. A clear example is the ECtHR case, where the Parliamentary Assembly is not liable to a gender balance outcome on the overall composition of the court, while states parties are compromised when nominating the three-name roster from which the assembly selects the final candidate. This is self-explanatory of the actual composition of the ECtHR. Additionally, the soft character of these international rules and guidelines prevents domestic courts and tribunals to deploy substantive control over national decisions on nominations, which are concurrently seen as acts of state.

If soft guidelines are applied to the appointing process, a better result might be expected than when they are applied to the nomination process, as observed in the trend followed by the HRC in the latest appointments. It is worth noting the pressing role exerted by the Advisory Committee Report of 2021, built upon a previous concern by the HRC, the CEDAW Committee, and the Working Group on Discrimination against Women and Girls, as well as under the influence of an important number of gender-parity related NGOs and scholars.

On the other hand, those international legal bodies whose statutory composition and nomination rules have not been amended or supplemented with specifically oriented gender guidelines since their creation after the Second World War present the worst scenario possible and the slowest path towards gender-balance, regardless of the general social debate on gender and women participation in international legal bodies, as is the case with the ILC or the ICJ.

Although conceptually disrupting as it might be, international organisations are not bound by human rights instruments – it is member states who are.[85] Thus, there is a new understanding in progress: gender balance obligations are not merely concerned with the domestic arena and access to or participation in the national justice system. They must also be opposable to the state when acting internationally and with regard to international legal bodies. Therefore, when nominating candidates or when voting inside an organisation for the appointment of final candidates, the state must be bound by gender-balanced outcomes, as an obligation arising out of the human rights treaties subscribed

[85] This line of argument is currently followed by different scholars. See, for instance, Grossman, "Achieving Sex-Representative International Court Benches", pp. 87–88.

by states, mainly CEDAW. And that must be so even when the nomination and composition rules of the organ do not include gender-balanced perspectives and commitments.[86] For instance, article 8 CEDAW provides that

> States parties shall take all appropriate measure to ensure to women, on equal terms with men and without discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

The CEDAW Committee has promoted a certain understanding that this article should apply to international legal institutions in its General Recommendations 8,[87] 23,[88] and 28.[89] Nevertheless, the committee has not yet openly addressed the proposed idea of binding states' competences on nomination and voting for appointment to international legal bodies to the obligations arising out of the CEDAW, although some scholars consider that this article "clearly provides for a state duty to ensure women de facto equality to access positions at international tribunals and other organs in charge of applying and implementing international law".[90]

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[86] It is particularly committed to the analysis in terms of non-discrimination and human rights obligation upon the states. See Dahdouh, Mary, Rodriguez Segui, Vaitiari., Smith, Virgina, and Zavala Herrera, M., "Achieving Gender Parity on International Judicial and Monitoring Bodies: Analysis of International Human Right Laws and Standards Relevant to the GQUAL Campaign", International Human Rights Law Clinic, University of California, Berkeley, School of Law, 2017, pp. 6–43.

[87] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 8: Implementation of article 8 of the Convention, 1988, considering positive, proactive measures should be generally taken.

[88] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 23: Political and Public Life*, 1997. See, specifically, para 40, where the committee states that "inclusion of a critical mass of women in (…) the international criminal justice system will make a difference", recommending also in para 49 that measures need to be taken for a better gender balance in committees and treaty bodies throughout the UN system.

[89] UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 2010.

[90] Martin, Claudia, "Article 8 of the Convention to Eliminate All Forms of Discrimination against Women: A Stepping Stone in Ensuring Gender Parity in International Organs and Tribunals", *GQUAL*, 14 September 2015; and "Article 8 of the Convention to Eliminate All Forms of Discrimination against Women (CEDAW): A Stepping Stone in Ensuring Gender Parity in International Organs and Tribunals", *IntLawGrrls* (blog), 13 January 2016.

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General Recommendation No. 33, on women's access to justice, has avoided this perspective of gender balance obligation when addressing the composition of international judicial organs.[91] It might be time for the CEDAW Committee to reflect and subscribe to a more stringent approach, in line with the approach at the national level.[92]

States have proved equal to the task in selected cases, following hard rules establishing an obligation of result (ICC, AfCHPR) or soft rules (HRC). They seem ambiguously oblivious in others, despite soft rules defining the process of and control over nominations (ECtHR, CJEU, certain treaty bodies). These very same states turn their backs to gender representativeness in several legal bodies (ILC, ICJ, ITLOS, IRMCT). International organisations seem concurrently ahead of the debate and purportedly ambiguous at compromising with gender balance and its consequences in terms of international legal bodies' composition. The intellectual and social move is exceedingly accomplished, and there is no way backwards for that matter. Hence, robust fruits have been already reaped in recent years.

Proposals and best practices in this field have been advanced by stakeholders,[93] academia,[94] and the HRC (for instance, in the Advisory

[91] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. *33 on women's access to justice*, 2015. See, specifically, para 56, where the committee recommends, in regard of the "specialized, judicial/quasi-judicial systems and international/regional justice systems", that states parties should "take all appropriate steps to ensure that all specialized judicial and quasi-judicial mechanisms are available and accessible to women and exercise their mandate under the same requirements as the regular courts".

[92] Rubio, Ruth and Petit de Gabriel, Eulalia W., "Justice Through Gender Balance in the United Nations: An Urgent Matter of Consistency", in M. Telò, ed., *Reforming Multilateralism in Post-Covid Times. For a More Regionalised, Binding and Legitimate United Nations*, FEPS, 2020, pp. 161–163.

[93] Robertson, Anderson, and Burke, *Women at the Table*, pp. 41–46, analysing best practices examples both international (pp. 7–17) and domestically (pp. 18–40); Krsticevic, Viviana *et al.*, *Gender Parity as a Way to Strengthen the UN Treaty Bodies*, GQUAL, 2020. See also all contributions sent for the preparation of the Report of the Advisory Committee of the Human Rights Council regarding gender balance in international bodies as mentioned in Resolution 41/6 of the Human Rights Council from July 11, 2019, at https://www.ohchr.org/en/hr-bodies/hrc/advisory-committee/levels-representation-women.

[94] Burgorgue-Larsen, L., "*De lege ferenda*: reflexiones y propuestas para mejorar la designación y la elección de los integrantes de la Comisión y la Corte Interamericana de Derechos Humanos", in CEJIL, *Proceso de selección de integrantes de la Comisión y la Corte Interamericana de*

Committee Report 2021) concerning nomination and election processes, such as wider dissemination of positions, proactively identifying female candidates, working with and through civil society organisations and non-state actors, adopting national transparent and public mechanisms, and so many others.[95]

While all these recommendations may have a straightforward impact, we suggest combining two approaches, mainly focused in the election stage.

On the one hand, a compartmentalisation method could be established for gender distribution, something which has already proved successful for the African Court on Human and Peoples' Rights. For some authors, however, the idea translates into a "quota" system.[96] In our opinion, opposition to gender quota systems among feminist authors comports with a biased treatment, as quotas are only rejected when they are an obstacle for a (near) female-only composition. Such an attitude undermines the equal right of men to gender-balanced representation. Although the quota scheme may encounter resistance or be proposed as a secondary or temporary measure based on the fundamental rule that nominations are to be grounded on merit, competence, and excellence,[97] it merely mirrors a well-established system for balanced or appropriate regional representation in many international institutions.

Derechos Humanos, pp. 27–36; Grossman, "Achieving Sex-Representative International Court Benches", pp. 90–95; Grossman, "Shattering the Glass Ceiling in International Adjudication", pp. 268–280; Krsticevic, "Gender Equality in International Tribunals and Bodies: An Achievable Step with Global Impact"; Jarpa Dawani, Josephine, "Keeping Gender on the Agenda for International Benches: A Case Study of the African Court on Human and Peoples' Rights", in Baetens, *Identity and Diversity on the International Bench*, pp. 516–537.

[95] Lijnzaad, Liesbeth, "The *Smurfette* Principle. Reflections about Gender and the Nomination of Women to the International Bench", in Baetens, *Identity and Diversity on the International Bench*, pp. 29–49, considers that "improving the nomination process may yield more results in terms of increasing the number of women on the bench, rather than merely addressing the election process itself".

[96] Grossman, Nienke, "Achieving Sex-Representative International Court Benches", p. 93. Baetens alerts on the quota system as a maximum requirement to be filled, not a minimum one, thus contradicting the acclaimed quote by Judge Ruth Bader Ginsburg: "When I'm sometimes asked when will there be enough [women on the Supreme Court], and I say 'When there are nine', people are shocked. But there'd been nine men, and nobody's ever raised a question about that." See Baetens, *Identity and Diversity on the International Bench*, p. 25.

[97] Duly discussed in Nosworthy, Janet, "Diversity, Inclusion, and Legitimacy in International Courts and Tribunals: Insights from Within, Perspectives from the Periphery – An Island Girl Speaks", in Baetens, *Identity and Diversity on the International Bench*, pp. 551–554.

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Having proved that the regional quota system is part of the universalisation and representativeness of international bodies, and having demonstrated the outcome already achieved in the two courts following such an approach (ICC and AfCHPR), we strongly support a dissociated election regime on the basis of gender. For those unipersonal positions, such as special rapporteurs, a gender-based rotating system could be adopted, as it is done informally for the regional approach. More solid critiques to the quota system could be advanced from the non-binary approach to gender, which nowadays engages scholars and civil society alike. Yet that is a complex issue to be analysed further.

On the other hand, both states and international organisations should be held legally bound and accountable for respect in terms of gender requirements. Therefore, internal bodies – often, if not always, intergovernmental in nature – in charge of the selection for or appointment to international legal bodies (such as the HRC, the Parliamentary Assembly of the Council of Europe, the Committee of Ministers of the Council of Europe) should be liable to compensate and nominate candidates from the under-represented gender at any occasion, as an independent obligation imposed on the states by statutory composition rules or statutory nomination rules.

An interested party's submission of a claim on this basis is probably perceived as outlandish, for nominated, not elected candidates, are singularised persons in a restricted juridical and academic world. Moreover, this is far from being possible at present, given the absence of a provision for international organisations to ratify most of the human rights treaties and protocols establishing human rights control bodies. Consequently, individuals of the under-represented gender should not have a course of action to present a claim under human rights law based on the non-discrimination principle (as expressed in article 8 UN Charter, article 8 CEDAW, or any other human rights treaty) against the organisation to which the body belongs through international human rights control schemes.

Alternatively, if states' human rights obligations can be seen as governing not only internal but also international appointments by states, under existing rules, the responsibility of states adopting the appointment decision could be addressed, as per article 58 of the draft articles on international responsibility for wrongful acts.[98] States taking a vote which results in the under-representation

[98] Draft articles on the responsibility of international organisations, adopted by the International Law Commission at its sixty-third session in 2011 and submitted to the General Assembly as part

of any given gender would be assisting the international organisation in the commission of an internationally wrongful act that could also be wrongful if committed by the state itself. As it has been commented by Giorgio Gaja,

> Articles 58 and 59 specify that "an act by a member State of an international organization done in accordance with the rules of the organization does not as such engage the international responsibility of that State" for aiding or assisting, or for directing and controlling the organization in the commission of an internationally wrongful act. While States retain their international obligations when they act as members of an international organization and may therefore breach an international obligation when acting as members, the fact of contributing to the functioning of the organization does not *per se* establish their responsibility.[99]

Thus, it is extraordinarily relevant to return to the initial discussion of this paper, whether an obligation exists for international organisations, arising out of hard or soft rules, upon which international legal bodies depend for achieving "gender equality and empowerment of women", including in the international legal arena. Beyond considering "gender parity on the bench" to be highly desirable,[100] we are of the opinion that it is not a craving, not a merely gratifying aspiration, but rather a legal obligation to be steadily served by states and international organisations. The framework already exists, the means should be on the way.

To conclude on the question of gender balance and international legal bodies' composition, we must state that we are not there yet, although we have begun reaping what has been sown for decades. Recent rains are unquestionably preparing an incredible harvest in the short and medium term. As Eleanor Roosevelt voiced, "The world of the future is in our making. Tomorrow is now".

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of the commission's report covering the work of that session. See International Law Commission, Report on the Work of Its Sixty-Third Session, U.N. Doc A/66/10, para. 87 (2011).

[99] Gaja, G., "Articles on the Responsibility of International Organizations", United Nations Audiovisual Library of International Law, 2014.

[100] Crawford, J., "Appearing Before and Sitting with Female Adjudicators", in Baetens, *Identity and Diversity on the International Bench*, p. 424.

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Peace & Security – Paix et Securité Internationales
ISSN 2341-0868, No 10, January-December 2022, 1204
DOI: http://dx.doi.org/10.25267/Paix_secur_int.2022.i10.1204

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