



**British Institute of
International and
Comparative Law**

'Procedural Reform in International Courts and Tribunals: Feasible? Desirable?'

Temple Garden Seminar Series in International Adjudication

Event Report

Date: 17 November 2015, 17:30-19:00

Venue: British Institute of International and Comparative Law
Charles Clore House, 17 Russell Square, London WC1B 5JP

Speakers:

- **Dr Filippo Fontanelli**, University of Edinburgh
- **Dr Arman Sarvarian**, University of Surrey
- **Professor H el ene Ruiz Fabri**, Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg
- **Judge Ineta Ziemele**, Judge at the Constitutional Court of Latvia and former Judge at the European Court of Human Rights

Chair:

- **Rodney Dixon QC**, Temple Garden Chambers



This seminar discusses the key findings emerging from an edited volume entitled *Procedural Fairness in International Courts and Tribunals* published by the British Institute of International and Comparative Law in November 2015. The seminar was chaired by **Rodney Dixon QC** (TGC), who expressed his satisfaction, as a practitioner, for a book on this topic to see the light, as it is an excellent foundation covering a large range of areas, looking at both international and domestic decision bodies.

Speakers include two of the editors of the book. Speakers included two of the book's editors, **Dr Filippo Fontanelli (University of Edinburgh)** and **Dr Arman Sarvarian (University of Surrey)**, as well as **Judge Ineta Ziemele (Judge at the Constitutional Court of Latvia and former Judge at the European Court of Human Rights)** and **Professor Ruiz Fabri (Director of the Max Planck Institute for International, European and Regulatory Procedural Law, Luxembourg)**, who acted as external commentators.

Dr Filippo Fontanelli

The topic of reform implies something is not going very well with regard to the procedural work of international courts and tribunals. In order to justify the calls of reform, the mapping of available state-of-the-art is necessary so as to understand the baseline and objectives of reform. Arman will discuss the objectives of the reforms and how they can be brought about, while I will discuss the baseline.

What is the current situation in terms of procedural fairness in international courts of tribunals? During the study that led to this book we realised quickly that we rely on concepts and principles that derive from procedural fairness as known in domestic proceedings. It is undeniable that the studies and culture that we rely on, directly concern domestic proceedings. To a certain level of generic quality, it can be agreed that certain principles of procedural fairness can be discussed with a similar understanding from all. However, it is undeniable that those vague principles do not turn into rules sufficiently easily to solve a tricky procedural issue.

It is difficult to trace that kind of operative principle because we have, and it is very easy to realize, two very different fields to work on, in which fairness is supposedly very desirable. In the field of domestic proceedings, we have a judiciary function that is dual, justified and legitimised by the exercise of governmental powers and a central authority. Whereas, as we know, justice in an international scenario has to be, as a matter of principle, a consensual matter. It resembles very much a kind of contractual justice that doesn't necessarily correspond to judicial proceedings as we know them in the domestic field. This is why some of these principles that we can talk about in domestic proceedings, such as equality of arms or right to a fair hearing do not translate very well in the international sphere.



This is not for the sake of distinguishing. I know very well that sometimes there is this 'I know a tiny distinction and I want to talk about it and rule out all sort of analogies'. In this case the distinction is crucial. We are talking about a potentially disruptive distinction in the two fields of dispute settlement that advises against analogies that are not very well thought. We cannot rely without thinking twice on the common terminology about procedural fairness. We tried to break down the ideal procedural fairness to see whether there is some minimal element that we can just consider, isolate and then translate into the international sphere. I won't bore you, but there is also some theoretical account of what the minimum idea of what procedural fairness implies as opposed to substantive fairness and justice).

We can be pretty much in agreement that procedural fairness serves some discreet functions in all systems of law, including in international law. To the extent that dispute resolution is a means to remove and substitute violence in the resolution of these fields that procedural justice serves at least three functions. One is to guarantee that the goals of the substantive law will be achieved through the process. The other is that this effectiveness of the law will feed and fuel the legitimacy of the process, and the legitimacy of the process, in turn, will fuel obedience and loyalty by whoever is subject to the process. Rulings will be considered more acceptable because they are reached through a procedurally fair process.

These functions of procedural fairness can be translated into international law but they beg the question of what is perceived as acceptable and fair, and all matters of fairness and justice depend on a value judgment that changes across communities and and relies on the values that prevail in each community. So what we have is some functions of procedural fairness and that is something. It is not a definition, but it's a functional description. We might not be able to tell you the definition of procedural fairness from which you can deduce principles and specific rules, but we can give you a description of what procedural fairness is for.

Then, we faced a problem, which is the identification of the values that are particular to each community and that justifies a judgment of fairness in that particular community. We can think of obvious examples: particular attention is paid on the rulings of jurists in certain countries compared to other jurisdictions. This is a good example of which values tend to inform procedural fairness more or less in certain proceedings. There are several examples of this that are reported to show that the values of a community do not only translate into ideas of substantive justice but also into several procedural arrangements. So when we have the functions of procedural fairness, then we have to see how they translate into international law, in line with the potential and idiosyncratic values of the international legal system. There we find problems because there is so much that cannot translate from domestic proceedings to international legal proceedings. The difference we have already mentioned is that international legal proceedings tend to flow from an underlying exchange of consent between States (as opposed to what we know is the case in domestic proceedings that are a valid emanation of states' authorities).



The second is that we have an inherent problem, that the subjects of the international proceedings are the same entities that make the rules, as a matter of principle. This is not something that we are used to and it raises questions as to the theory of the sources of law with respect to rules and principles of procedural fairness. To the extent that we can see principles and rules of procedural fairness as legal we have to be able to identify the rules, especially at the international law level, and we understand that there are several priorities that are different from those in domestic proceedings. This begs the question as to whether, in the case of an unregulated instance of procedural complication, we are allowed to fill the gaps as it is possible in domestic proceedings; I will come to the system of sources shortly.

Another problem is presumably that the consensual paradigm in international law creates, instead of the virtuous circle aforementioned (*effectiveness feeds into legitimacy that feeds effectiveness), leads to a vicious circle. This is because International courts and tribunals must pay some attention to the issue of compliance that is not as granted as it could be in domestic proceedings and therefore this virtuous circle might become a vicious one, because: I am very careful about the issue of compliance, I must be a bit shier in setting procedural standards than might be unwelcome to the state and so on.

So we realised that we have a very different baseline, even in terms of values and principles that need to be dealt with in order to realise what international procedural fairness could mean. And of course we know that it cannot be a neutral fact. The idea of procedural fairness as something that simply makes procedures possible, or the legal system sustainable, does not really tell us, in the specific cases, what the procedure should be, in case of doubt. We find ourselves at a point where we see that procedure exists. It is not because of our theoretical difficulties that principles of international procedure are not there. They are there and we must address the problems that might happen. The impression, and this is a strong one, is that when there are problems, these are treated very pragmatically, in a troubleshooting way that doesn't try to derive principled answers from fixed principles. That is why I believe it is not bad to talk about reform, because what we see is a constant attempt to catch up with day-to-day problems in international court proceedings and arbitration. This is not desirable.

We would like an overarching principles and ideas from which to derive specific rules. If we don't have that because we fail to have a unitary notion of procedural fairness, at least we might be able to work on a case-by-case basis in every system and identify overarching principles (transparency, equality of arms...) and that case-by-case adjustment in the rules of procedure, or in the statutes or practice, or maybe you could authorise or tolerate the practice of inherent powers of the tribunal to tackle tricky procedural issues.

That is why we proceeded with a mapping of what works and what doesn't really work in the procedure of international courts and tribunals. This is supposed to be a starting point, launch a conversation and raise awareness to fix some of these procedural dilemmas. Maybe taking a step back and taking a more holistic view to the problem, but also with a view to pragmatic



solutions for problems that arise continuously. This is more or less what Arman will talk about now, in terms of why reform is needed and where it is supposed to be headed.

Dr Arman Sarvarian

If we admit that there are problems concerning fairness that do arise in practice (however different they may be from jurisdiction to jurisdiction, and in terms of scale or gravity from jurisdiction to jurisdiction) however difficult it is to define what fairness is a standard against which to judge these, what are the implications? Ordinarily if one is identifying a problem, it is natural to try to solve it. By way of example, the Croatia v Slovenia arbitration case: in the past six months the arbitration proceedings between the two States, which have been ongoing for several years, were approaching its culmination to an award in a territorial and maritime case. Round about May and June, press releases of the arbitral tribunal (PCA) indicated that there were concerns about potential leaks; an internal investigation was conducted by the tribunal indicating that there was no leak and nothing to worry about.

According to a press report in July in Croatian newspapers, there had been a leak (illicit conversations between the arbitrator of Slovenian nationality and the Slovenian agent) concerning the substance of the case, with arbitrators speculating as to the outcome of the case and offering to present viewpoints, essentially consulting on points that might be presented by arbitrators in deliberation as “notes on the case”. In reaction to this, there was considerable outcry on the part of Croatia that there was an alleged breach of secrecy and the arbitrator of Croatian nationality resigned. He was briefly replaced by Judge Abraham (ICJ) who was the appointing authority under the arbitrator agreement as a way to try restore confidence in the proceedings. He subsequently resigned in August following the denunciation by Croatia of the arbitration agreement and the proceedings. The systemic implications of this include the ability to detect a purported leak. The internal investigation did not identify a leak, so a question that might arise, is what sort of safeguards exist to preserve the security of internal deliberations, particularly in the electronic age and to ensure that highly confidential information (e.g. commercially valuable information) can be safeguarded in a practical way; for example, who has access to what sort of documents, how are they circulated, is there any encryption in terms of electronic communication and so forth. Perhaps these are administrative question but they have considerable implications.

And then, where an allegation of a leak might arise, what sort of investigative resources and abilities do these institutions have to investigate themselves, particularly in a politically sensitive case and where this concerns an arbitrator who is a national of one of the States in the proceedings? This is particularly relevant in such proceedings which depend upon consent of the parties for its effectiveness. Then, there is a question of a review mechanism. For example, something has gone wrong during the arbitration and procedural unfairness is grave, what implications does this have for the award. What happens if these concerns are

raised post-award? Is there a review mechanism that is systemically available to examine that and potentially void the award and provide a remedy for allegations of serious unfairness?

The third point is the nationality point. Here, arbitration is a different beast, with parties having greater theoretical control and where concordantly nationality plays perhaps a greater role. Nonetheless, can we seriously suggest that the time may be approaching for wholly neutral panels? That is to say, the practice may change in terms of appointment of judges and arbitrators to individual cases. Election of judges is a different question, but if we talk of the hearing of a particular dispute, could we imagine a tradition or an expectation whereby nationals of neither party to the proceedings are present on the bench. This raises different political questions, and we are talking about politics if we talk about reforms.

My impression from discussions is that there is a range of views on these sort of questions. One view is that there is no real problem here; the system operates quite well. Another view is that there are problems but they are rare so, in essence, there is no need to worry too much about systemic problems. The third view is that there are problems but these can be addressed through intra-institutional measures; these problems can be addressed through measured, proportionate reforms or responses. The fourth is that there is something deeply rooted that threatens the integrity of the system more widely, so more radical or far-reaching reforms are needed.

What these views often overlook, is that reform is quite a flexible concept, in that a range of potential problems ranging from administrative measures (how information is controlled within the institution) to political questions of nationality and the appointment of judges and arbitrators to cases. It follows that reform can manifest itself in a range of ways. For example, Lyndon Johnson managed to radically reform how the Senate operated as an institution without amending a single rule of procedure. He found creative applications of existing rules to effect the changes he wanted to the seniority rule and to the rule of unlimited debate which had caused the Senate to be quite dysfunctional.

So when we talk about reform, we tend to think about texts and drafting rules of procedure. They may be part of whatever measures are contemplated, but this is not a *sine qua non*. Other non-binding measure could be adopted (the practice direction of the International Court of Justice are an excellent example) or administrative measures, so we need to think creatively and flexibly when we conceive of reforming. The International Court of Justice last reformed its rules of procedure in 1979 and it may well be said that, as part of a healthy institutional practice, looking over rules of procedures every 30 years may just be a healthy housekeeping exercise, for no other reason than to imagine whether there are possible upgrades or innovations that may be quite useful. Nonetheless, if we consider the aforementioned practice directions, those have been a reaction – under the presidency of Judge Higgins – to what was perceived to be a problem, in particular of *ad hoc* judges serving in one case and serving as counsel in another case at the same time. This was perceived a problem, particularly for judicial secrecy and access to certain areas of the Peace



Palace, and this was a potentially unhealthy practice. So the practice directions essentially express the expectations of the institution. Only one example of one person not acting compatibly with these directions, and they were not unaware that they were so doing, so that was quickly resolved. They are, in practice, treated as rules and respected as such. There is no point in antagonising the court needlessly and, moreover, the change in practice of appointment of *ad hoc* judges, whereby it seems to be a growing tradition that they are not nationals of the parties appointing them; this seems like a healthy development which is not laid down in the direction, but is occurring in practice.

If we divide judges into conservatives and reformers, we might say that on the part of the former, with genuine concerns of these sort of problems, new measures may not be perceived as a threat to judicial discretion, only that it can be exercised better. Yet, conservatives also often realise that by taking ownership of the reform process, this can be seen as a useful tool for them. For example, regarding the European Court of Human Rights' (ECHR) resolution on judicial ethics, discussions with relevant individual initially evidenced the view that this was unnecessary. Yet when a draft was presented, the same individuals realised that it is an issue, for example, for judges to accept a week-long paid holiday from the government of nationality. These may not be rules, but it is suggested that they are no less effective, despite it being accepted that this is not yet measured in great detail. On the other hand, reformers might incrementalise their approach. They can recognise that picking battles that can be won (measures that are potentially acceptable). For example the nationality question: are we seriously going to eliminate nationality when electing judges? It is suggested that this will not occur. Can we conceive of wholly neutral panels? Maybe.

In conclusion, I suggest that common interests of conservatives and reformers is the institution. Some may be sceptical of reform, however flexibly or loosely conceived, but if we talk about problems of the gravity of what just described, it is suggested that some advantages from the *status quo* can be seen. So social dynamics should not be ignored. While these matters are potentially sensitive, this should be always be about the question of principle and healthy practice, and not the individuals.

Judge Ineta Ziemele

(Judge at the Constitutional Court of Latvia and former judge at the ECHR)

I have lived through a number of the issues and questions posed in the book. I have had the privilege of reading through the book. My reading of it is that it offers a critical view of the downside of procedural fairness in international law fora. I agree that questions posed and direction taken are all valid and necessary. But having had more than nine years' experience in the ECHR, I take a more optimistic view than the one presented in the book and my comments should be taken with this personal bias in mind.



The first point is the question of whether it is possible to have a universal concept of procedural fairness in international law. A list of challenges are provided to this proposition starting with the usual one that we are limited in the potential parallels we can draw with domestic law because of State consent; that the rule makers become the parties, which turns the question of procedural fairness upside down in a way. I take a slightly different view. As far as international law is concerned and at least permanent courts (ECHR, ICJ, IACtHR) this is not such a problem. Once the courts are established they take a life of their own. Thus, with some examples to follow, I would be careful as to the importance given to state consent in different contexts and mechanisms.

The next question is whether there is a core understanding of procedural fairness in international law? I read the book's critical view more positively. I think that there is a core premise of procedural fairness in international law. By definition, an independent and impartial tribunal is necessary, and I believe that there is general understanding of this. Then you could also have an element of equality of arms in the proceedings. Of course there are issues of burden of proof and also standard of proof, and the question of filling the gaps in the procedure, which is also an important issue.

Speaking about the independence and impartiality, there are some issues relating to the procedures and composition of tribunal that need to be addressed. There are two issues that need to be separated. We would probably all agree on the ideal model: judges are not linked to the respondent state and have sufficient guarantees (e.g. elected for a certain amount of time with no prospect of re-election, so there is no campaigning or potential of dependency on those who elect them). Another aspect is often forgotten in this regard, and I also did not see this in the book. This is the relevance of the composition of the court for its legitimacy. This is a very important point to make. I submit that I have felt at the ECHR, that it is perceived by the parties (individuals and States) as legitimate, in a sense, when amongst the judges you don't have the usual suspects; where you really have judges coming from all over Europe. However, for the States (understandably why), but also for the individuals, it is important to have a judge from their nationality on the bench. So, I would add legitimacy to considerations and how this affects our perception of how an impartial and independent court should look like. Therefore, in the context of legitimacy, also the question of *ad hoc* judges or nationality changes slightly.

With regard to equality of arms, the chapters on human rights and criminal law jurisdictions, there is the juxtaposition between an individual on one side and the state on the other side. So you have this asymmetry drawn where the individual is involved in the proceedings, the nature of the proceedings changes. The chapter on the IACtHR system suggests that there is an in-built bias in favour of individuals in human rights courts. Yes and no; I would still need to reflect more firmly on this distinction between individual-State and State-State proceedings. I wonder about this and whether you can always perceive that the state is always seen as the powerful one. You have, for example in the European context, very weak or failed States; so

this cannot be an automatic conclusion. In investment arbitration, there are companies that are far more powerful than some States. So the automatic perception of bias in these mixed settings needs to be reflected upon further.

What happens in fact in the ECHR, is that despite it being an individual-State dispute, equality of arms has always been the point of departure; it has guided numerous reforms that have taken place. If one looked deeper into what has been going on in the ECHR, you would see that indeed equality of arms, by definition in the minds of the judges, forms the core of procedural fairness. When it comes to lodging an application to the court, the burden of proof is initially on the individuals. Maybe in the 70s and 80s (when there was a case per year) there was some sort of bias in relation to the individuals, but clearly not anymore. The court has evolved and equality of arms has become an issue of credibility of the court. Now, the court deems it unthinkable to start building a case for an individual, which might have been the case early on. The burden of proof clearly firstly lies on the person addressing the court and then it may shift. The Court gives an effort to explain – being conscious of the importance of judicial reasoning – during a lengthy exercise why the burden of proof has shifted, or why the standard of proof (for example in torture cases) may differ.

Filling the gaps links to the reform point. So far everything that has been achieved in improving the ECHR's procedures has been done by the court itself unfortunately. This is unfortunate because it indicates that it is not a priority in States' political agendas. While originally when we started thinking about the issues covered in the book, we were hoping that governments should provide the court with a larger budget to have more space to develop its procedures, this did not materialise. The Court has nevertheless filled the gaps by use of its inherent powers or by interpreting the Convention accordingly. Of course the Convention system is helped by the obligation of States to cooperate with the Court which is *expressis verbis* laid down in the Convention This is helpful in terms of equality of the parties in the proceedings.

The framework within which the judges discuss various reforms to fill the gaps, there are four key words: independence (of the court); equality (of the parties within the proceedings); the legitimacy and credibility (of court). There is a general culture within the court considering these four issues as having fundamental value and these inform decisions concerning reforms. Decisions are not to contradict these four values or principles.

With regard to reforms, in (European) political terms I would be careful with feeding politicians ideas about reforms. The situation is such that, if it would require amendment of the treaties, this is a slippery slope to take. You have protocol 16 and the amendments proposed by the UK were not helpful and there is nothing new in those amendments. On the other hand, the work of academics with interest and expertise in procedural fairness is extremely important and there is need for more work in this area. Judges follow in detail what is published on procedures and judgments. It is helpful and may give some good inspiration for the improvement of international procedures.



Professor Ruiz Fabri

(Director of the Max Planck Institute for Procedural Law)

I believe that procedural law is under-investigated despite high stakes. Procedural rules also say something about values of a society (more than substantive law in a way). I could speak a lot about the book, but I will concentrate on the question of whether there is a case in favour of or against procedural reform?

Can there be a case against procedural reform? Certainly not. To a certain extent, the question shouldn't even be. As the book shows, accurately in my view, procedural law is the mirror of the society in which the rules operate, and in as much as, and as long as, society evolves, and they evolve all the time, procedural law should evolve too. So, the general perspective is the basic logic that these rules should adapt to society and evolve all the time. It is implied that they have the ability to change. More specifically, some rules could appear ill-adapted or dysfunctional and there are a couple of examples in the book. You can also find that some procedural rules are not accurate. One example is the debate of confidentiality in the Proceedings of the WTO, with judges themselves together with the parties making procedural decisions in order to circumvent issues for the sake of the legitimacy of the adjudicating body because of the social request of transparency. You can have all this conflict, and it is understood that procedural reform is a continuing process, following the evolution of the society. Any principles against change is meaningless.

But of course the issue is which changes, and how to make them? This is where I join what Judge Ziemele was saying a moment ago. The question which arises immediately, is it good or dangerous that procedural law is not under the radar anymore? It is interesting to notice that most people focus, in particular academics, on substantive law and not procedural law (unlike practitioners; this is where I agree that there has to be a shift in the academic world). The problem is that if there are too many protests around the fact that there is a need for reforms, and if the attention of politicians is attracted, the problem is that it will become high politics instead of being low politics. The problem is not whether it is political or not, as it is political. The problem is: does it become high politics or does it remain low politics? Here, I agree that low politics is better, because high politics will kill the topic but will also have a blocking effect, as it will be a counter-functional solution which will reflect on the interests of procedural fairness. Once again thankfully, when I am speaking about this concept of procedural fairness, with all the difficulties which come with it, I wanted to highlight this aspect.

This being said, I think we have to reflect on procedural reform, and reflect on it at the academic level, also because we are able to take into account the broad landscape, and this is what I very much appreciated in this book; the fact that in this approach of mapping the fields it can be completely exhausted. I think that comparison is one of the most useful tools of all, which requires caution but it is nevertheless very useful. Being able to underline problems,



underlining the downside and the difficulties of transferring some things, while underlying at the same time that this problem and the solutions are not automatically transferable, but nevertheless can give ideas for some reforms.

What are the necessary reforms? I think we have to keep in mind the context: first, what is striking to me and is also a striking feature of the book, is the fact that all courts today are confronted to a flow of information from various sources which has become a true challenge. So it puts the court, as well as fact-finding, at stake. The WTO provides an example: during the first decades, the bodies usually produced something like 94 pieces per disputes, now its 300 pieces in the same time frame. This is one example, but it is true everywhere. There are more and more papers, and this must be dealt with. There has been a change in scale and it raises a big issue, in terms of procedural rules of fairness.

At the same time, it raises questions of the expertise of the judge and the role of experts, this issue also appears a lot in the book, with the issue of the phantom experts which are taken as counsels. Even now there is a discussion of having experts as part of the bench. For example, there are people saying that for arbitration you should have an expert sitting on the bench to avoid bringing experts as witnesses or counsels. But this resolves nothing as it is possible that there is not one truth. Even if there is only one expert, his expertise can also be contradicted. This debate comes with a flow of information.

A lot of disputes have become out of scale in comparison with the scale of the court, to the scale of the procedure, to the means of the court. There is a systemic problem which has to be taken into account and which, is in my view, not sufficiently taken into account in the approach. Another thing is that nowadays, courts, like many places, have become places for public debates. This is why more and more people who consider that there is a court at the political level, come to court in order to have their cause heard by someone. This comes with a lot of indications regarding the parties, in terms of participation and also funding, because if you cannot raise your cause, you will find someone to carry your cause, and you will pay for it. In some courts, it is considered as normal, and in other courts it is considered as not normal. The problem is where the debate takes place.

The other side of the coin is the debate (which is strange in my view) concerning democracy in relation to international courts, and I say in which world do we live in which judges are expected to meet the challenges of democracy? The judicial power has never been understood as a democratic power. So now in the international system we have the discussion about democracy in international courts. The discussion is very puzzling to me, but at the same times shows that all the lines are blurred in this regard, and this is related to the fact that more and more public debates are brought to the courts because they do not take place elsewhere.

Also we are contesting the domestic authorities. The ability of NGOs to bring amicus curiae observations to international courts, is related to the fact that NGO doesn't succeed in having



their cause listened to by the domestic government. This leads to a vindication of transparency, which we must reflect on because it also has a second effect. The second effect is where do we place the line between what is covered by secrecy within judicial deliberation and what should be open to transparency. We are not sure about this.

The lines are more and more blurred, and there are more and more questions about the impartiality of the judges, about their independence, and these notions are subjected to more reflections that can also lead to issues of conflicts. When you begin to question not only the financial interest of people, also their intellectual interests, and their opinions, all this is a very slippery slope. The conflicts of interests must be chased, no doubt about this, but the problem is how do you define your conflicts, and there I would say you have a domino effect which has to be taken into account.

So, regarding impartiality, invoking this about nationality is a controversial issue. In the systems which do not have nationality conditions, like the WTO, you have discussions about removing that no-national conditions because it is dysfunctional; each rule has a downside to it. We need to continue the mapping process to identify the differences of how and when the downside occurs through comparison. It is in no way a negation of what has been done. On the contrary, it is an incentive to go further, be more systematic and provide ideas.

This leads to another remark, linked to this: being an international judge is not a career. This must be kept in mind. It lasts a few years and people have to do something after. Or, you only nominate people over 70 years of age, and even then. This is also a problem specific to the international setting. People are there only for a time and they have to reflect on and find an after. It is also true that there should be more diversity (e.g. young people; women), because there is no reason of having only courts and tribunals composed with old white men means that it should be more diverse. Yes, but, people will do only one thing in the lead international courts. This needs to be kept in mind in such criticisms.

All in all, there are a lot of issues that need to be investigated and the book itself provides a lot of information. This book is unique, but I expect that it is the first of a series. My last remark is my thought of how to translate procedural fairness into French. This is a tricky question; I have no answer. My problem is that we are speaking about and looking for something which could become a universal standard, but we are unable to translate or express in other languages; a challenge which we must also reflect on.

This Report was prepared by **Nikolaos Pavlopoulos**.



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