



Coalition for the International Criminal Court (CICC)
Questionnaire to ICC Judicial Candidates
2009 Elections

Please reply to some or all the following questions as comprehensively or concisely as you wish

Name: Kuniko Ozaki (Ms.)

Nationality: Japanese

Nominating State: Japan

List: B

Background:

1. Why do you want to be a judge at the ICC?

I am very much honoured to have been nominated by the Japanese Government as a candidate to fill the current judicial vacancy of the ICC. I have always had a strong interest in humanitarian law, criminal law and human rights law. Promotion of the rule of law and enhancement of sustainable peace, justice and the well-being of the people of the world through fair and effective criminal justice, putting an end to the culture of impunity, is what I consider to be my life's work.

I started my professional career with the Ministry of Foreign Affairs of Japan, but have since spent long years working in the area of international criminal law in various different capacities. As I will show in detail in answering the questions that follow, my background can be described, in a sense, as one-quarter diplomat, one-quarter Justice Ministry official, one-quarter academic and one-quarter UN official, which I believe makes for a useful mix in meeting the qualifications required as ICC judge.

Should I be elected as a judge of the ICC, I would join enthusiastically in the efforts of the Friends of the ICC and would dedicate all my efforts to carrying out my judicial duties. Needless to say, it is most important for the ICC to expeditiously develop and accumulate best case law and jurisprudence, displaying an international standard and best practices in both substantive and procedural law, to be followed by national and regional criminal justice systems with different legal traditions. It is only by providing such a model that the people of the world, regardless of their historical and cultural background, will regain confidence in justice and the rule of law. I hope and believe that my

You may send your completed questionnaire by email to punyasena@iccnow.org; by fax to 1 212 599 1332 or by mail to:

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knowledge, expertise and past experiences will allow me to make a significant contribution in this respect.

2. What do you think will be the biggest challenges facing you as an ICC judge?

As I stated above, my biggest challenge as an ICC judge will be to contribute, together with other judges, to the expeditious development of case law and jurisprudence of the ICC. International criminal law is still a new area of law, and it is the ICC's duty and responsibility as the only permanent international criminal court and a court of last resort, to provide superior jurisprudence through ground-breaking and precedent-setting decisions and judgments.

Beyond my judicial duties, I would also contribute, where appropriate, to responding to other challenges of the ICC, as stated below.

3. What do you believe are currently some of the major challenges facing the Court and what do you believe will be some of the major challenges in the coming years?

In addition to enhancing its judicial responsibilities through fair, effective and expeditious proceedings, some of the current and future major challenges facing the ICC are:

- Achieving the universality of the ICC. (I believe that my experience as a diplomat will serve to enhance the ICC's advocacy on the part of non-member States, especially in the under-represented Asian region, in order to realise true universality for the ICC.)
- Establishing good relationships with States Parties and other international organizations including UN bodies in order to obtain their full cooperation with the ICC. (My experience as a diplomat and as a UN official will contribute to the work of the ICC in this respect as well.)
- Establishing a partnership with the international community including relevant UN organizations and civil society, so that the role and responsibility of the ICC as a judicial organ will be properly supplemented by their activities to restore and promote the rule of law in local communities through capacity-building and other measures. (I have wide-ranging experience, as Director of the United Nations Office on Drugs and Crime (UNODC), in legal assistance and capacity-building in the area of criminal justice including in post-conflict situations, and hope, where appropriate, to assist the ICC and the international community in finding the best way in which the ICC's mandate can be complemented by capacity-building and other efforts to enhance local criminal justice systems.)
- Promoting organizational good governance of the ICC as an international body, both internally and in its relationship with the ASP.

List A or B Criteria:

While this question is relevant to either list A or list B candidates, we know that some candidates have competence that would qualify for both lists. Candidates with competence in both criminal and international law should feel free to answer any question in 4 a) or 4 b) to give the reader a more complete view of their background and experience.

4 a) For candidates on list A:

- How would you describe your competence in criminal law and procedure?

Although the Government of Japan has nominated me as a list B candidate, I believe I have also established my competence in criminal law and procedure through the following experiences.

During my years in the Ministry of Justice, I was heavily involved in the law-drafting and application of domestic criminal law on drug crimes, organised crime, money laundering, terrorism and illegal immigration, as a specialist attached to the Criminal Affairs Bureau. I also participated actively in crime-related treaty negotiations as a member of the Japanese delegation. In 2006, I was appointed as Director, Division for Treaty Affairs of UNODC, where I served until March 2009. My responsibilities in that position included assisting States in the ratification and implementation of the relevant international treaties, including the UN Convention against Transnational Organized Crime and the UN Convention against Corruption; development of domestic legislation on drugs, crime and terrorism; technical assistance including education and training of judges and prosecutors in developing countries; and establishing the rule of law and national criminal justice systems in post-conflict regions. I have also written extensively and have numerous publications in the relevant fields.

4 b) For candidates on list B:

- How would you describe your competence in relevant areas of international law, such as humanitarian and human rights law?
- How would you describe your professional legal experience that is of relevance to the judicial work of the Court?

Throughout my diplomatic career, I have held various important positions involving legal work. I was engaged in and contributed to the negotiations, ratification processes and implementation phases of various treaties and conventions in the fields of international crimes, human rights, humanitarian law, terrorism, environment and non-proliferation, amongst others. At the Permanent Mission of Japan to the United Nations, I was mainly in charge of the issues discussed in the Sixth Committee of the General Assembly, i.e., legal affairs, and was intensively engaged in the process of international rule-making.

I have been particularly involved in the relevant areas of international law such as international humanitarian law and law of human rights, and have developed my expertise and competence in these fields. As Director of the Division of Human Rights and Humanitarian Affairs at the Ministry of Foreign Affairs, I was in charge of the preparations for ratification and implementation of the Geneva Conventions and the Additional Protocols, amongst others, and led the Japanese delegation in the human rights-related meetings at the UN. I was also responsible for addressing human trafficking and issues relating to refugees as Director of Refugee Issues at the Ministry of Justice. Most importantly, I took active part in and contributed heavily to the process of preparation and negotiation to establish an ICC statute, both in New York and in Tokyo.

In addition to my work for the Government of Japan, I have rich experience as an academic lawyer, having undertaken research and teaching in the fields of international humanitarian law and law of human rights including matters relating to the ICC, as a professor of international law at various universities and institutions. I have written extensively and have numerous publications in the relevant fields.

Nomination Process:

5. What are the qualifications required in your nominating State for appointment to the highest judicial offices? How do you meet these qualifications?

Japan's Supreme Court, the highest judicial office in Japan, traditionally has recruited at least one Justice of the Court from among administrators of the Government, who are not necessarily lawyers qualified at the bar. Since the end of World War II, seven diplomats have become Justices of the Supreme Court in this way based on cabinet decisions, and have occupied the seat of Justice for government administrators for a total of more than 40 years. (Amongst the incumbent Justices of the Supreme Court, Justice Yukio Takeuchi was a career diplomat who served as Vice-Minister for Foreign Affairs and Director-General of the Treaties Bureau in the Ministry of Foreign Affairs.) This is because the Supreme Court requires Justices who are able to interpret international law with a level of practical experience in the field that domestic lawyers who have passed the bar examination do not possess. The Japanese version of this examination has little relevance to international law and aims predominantly to recruit legal professionals with expertise in domestic law. As a result, Japanese domestic court lawyers have few opportunities to be trained in the practice of international law.

I have acquired expertise in international law through my career as a professional diplomat and legal officer at relevant offices in the Ministry of Foreign Affairs including the International Legal Affairs Bureau and the Permanent Mission of Japan to the United Nations, in addition to my experiences in the Ministry of Justice, the UN Office on Drugs and Crime (UNODC) and as professor of international law at various universities and institutions. This places me amongst those in the group of diplomats who qualify to be appointed to the highest judicial offices in Japan.

6. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.

Article 36.4 (a) (i) stipulates that nomination of candidates shall be made by "the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question". As explained above, administrators including diplomats can be appointed as Justices of the Supreme Court in Japan, and such appointment is made by a decision of the cabinet. Following this practice, my nomination as a candidate for Judge of the ICC was approved in the cabinet meeting of 17 July 2009.

7. Have you provided the statement required by article 36(4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of States Parties? If not, why not?

Yes.

Legal System and Language Abilities:

- 8 a) Which legal system does your country belong to? Do you have knowledge or experience working in other legal systems?

Japan, in principle, belongs to the civil law system, although Japanese criminal law has certain elements in common with common law.

As a diplomat and specialist in the Ministry of Justice, I have negotiated various crime-related instruments including the ICC Statute and the UN Convention against Transnational Organized Crime, and gained rich experience in the process of finding the best mix of the different legal systems. In addition, as Director for Treaty Affairs of UNODC, my responsibilities included assisting States in the ratification and implementation of relevant international treaties, including the UN Convention against Transnational Organized Crime and the UN Convention against Corruption; development of domestic legislation on drugs, crime and terrorism; technical assistance including education and training of judges and prosecutors in developing countries with different legal traditions; and establishing the rule of law and national criminal justice systems in post-conflict regions. Through such tasks, I believe I have attained a fair level of knowledge and understanding of other legal systems.

- 8 b)** What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?

As stated above, I have long experience working with lawyers from different legal systems, both as a diplomat and as a UN official. I do not foresee any difficulties working with judges from other legal systems.

- 9 a)** What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language?

I took my second degree (M.Phil.) at Oxford University in the United Kingdom.

I am fluent and have no difficulty in working in English. Throughout my diplomatic career, I have worked in English on a day-to-day basis. I also worked as Director for Treaty Affairs of UNODC, where the working languages are English and French.

- 9 b)** What is your knowledge and fluency in French, if it is not your native language? Do you have experience working in this language?

I have a good knowledge of the French language.

Expertise and Experience:

- 10.** Please explain your qualifications for this position. What aspects of your career, experience or expertise do you consider especially relevant to the work of an ICC judge?

I am confident that my professional competence in human rights law, humanitarian law and criminal law which I highlighted above in the answer to question 4 makes me fully qualified for the position.

In addition, considering that judges of the ICC must deal with situations and cases which could be far more serious and difficult than cases of ordinary domestic crimes, I believe that mental strength, composure and a sense of balance which I acquired through my long years as a diplomat would certainly be relevant in the work of an ICC judge. These skills would help me to make legally balanced decisions in a decisive manner, while duly taking into account the various backgrounds and arguments put forward by both the prosecution and the defense. Moreover, I have always given 120% to

accomplishing any new tasks which I faced, whether as a diplomat, a UN official or an academic. I humbly hope that my devotion and diligence would also be of help in the work of the Court.

11. Do you have any specific legal expertise, including, but not limited to, violence against women or children?

As Director of Human Rights and Humanitarian Affairs in the Ministry of Foreign Affairs, my responsibility covered application of the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant instruments on gender- and child-related issues. I also had responsibility for Japan's activities at the twenty-third special session of the General Assembly entitled "Women 2000: gender equality, development and peace for the twenty-first century", which took place in New York in June 2000, with violence against women among the most important topics discussed. I have addressed human trafficking and sexual exploitation of women and children in various posts held throughout my career.

I also contributed to the drafting of the Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice as a member of the Japanese delegation to the Crime Commission in 1997, and became responsible for its implementation as Director for Treaty Affairs of UNODC from 2006.

At UNODC, I was also occupied extensively with promotion of the Human Trafficking Protocol and its application in various countries, in addition to various capacity-building activities involving treatment of women and children in the criminal justice system.

As a professor of international law at Tohoku University, I was an active member of the Gender Law and Policy Program.

12. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.

- a) What experiences have you had dealing with crimes of sexual and/or gender based violence?

Please refer to question 11 above.

- b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e. inquired into the ways in which men and women were differently impacted? If so, to what effect?

Please refer to question 11 above.

- c) Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection now think such an analysis would have been appropriate?

No.

13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75. What experience relevant to these provisions do you have?

As Director for Treaty Affairs of UNODC, I was responsible for promoting and providing capacity-building for the implementation of international standards for victim issues in accordance with documents such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (GA res. 40/34), Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC res. 1989/57), Plan of Action for the Implementation of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC res. 1998/21) and Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC res. 2005/20).

I also have extensive experience in various capacities in the area of assistance to women and child victims of human trafficking and sexual abuse.

14. Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.

As Director of Human Rights and Humanitarian Affairs at the Ministry of Foreign Affairs, I was directly in charge of the preparations for ratification and implementation of the Geneva Conventions and the Additional Protocols, amongst others, and led the Japanese delegation in the human rights-related meetings at the UN, where I advocated for the adoption of a number of human rights-related resolutions. I was also responsible for efforts to address international crime and transnational crime and drug and human trafficking, and led the negotiations for the Convention against Transnational Organized Crime and the Convention on Cybercrime. Above all, I publicly and personally advocated for ratification of the Rome Statute, both as a diplomat and as a professor.

15. Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience.

I served as Director for Treaty Affairs of UNODC from 2006 to 2009.

- 16 a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.
(All in Japanese)

Books

International Human Rights Law and International Criminal law (Shinzansha, 2004)

International Law (Bridge-book Series) (Shinzansha, 2003, co-author (2nd edition, 2009))

Treatises

“UN Convention against Transnational Organized Crime”, *Gendai Keijiho* vol. 9 (2007)

“Gender as the mainstream in the United Nations” in Toshiya Ueki and Hiroyuki Tosa (eds.), *International Law, International Relations and Gender* (Tohoku University Press, 2007)

“Punishment of war crimes in Japan” in Shinya Murase and Akira Mayama (eds.), *International Law of Armed Conflicts* (Toshindo, 2006)

“Exemption of penalties on illegal entry of refugees coming directly from a territory where their life or freedom was threatened” in *Jurisuto Important Cases in 2002*, (Yuhikaku, 2003)

“Punishment of human rights violators in international law” in Yozo Yokota (ed.), *Contemporary International Law and the United Nations, Human Rights and International Tribunals* (Kokusai Shoin, 2003)

“The scope of national criminal jurisdiction over violations of human rights” *Kokusaiho Gaiko Zasshi* vol. 102-1 (2003)

“International framework to fight against trafficking of children” *Hougaku Seminar* 2003-1 (2003)

“Major work of the Human Rights Commission in 2000” *Kokusai Jinken* vol. 12 (2001)

“Transnational Organized Crime — Japan and the G8 Summit Meeting 2000” *Gaiko Forum* 2000-8 (2000)

“Supreme Court (3rd Bench) Decision on 18 October 1996 — Legality of undercover operations in drug crimes investigations” *Horitsu no Hiroba* 1997-7 (1997)

“Osaka District Court Judgment on 22 September 1995 — Controlled Delivery and Custom Law” *Kenshu* vol. 578 (1996)

“Problems in the application of Article 8 of the Drug Special Law” *Kenshu* vol. 581 (1996)

16 b) Please provide us with an electronic copy of any writing or opinion describing your experience.

N/A

Other matters:

17. Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.

No.

18. Have you ever been found after an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.

No.

19. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff, Court officials and others subject to his or her direction and control to refrain from such words or conduct.

a) Do you disagree or have difficulty with this expectation?

b) How will you be able to meet this expectation?

I have no difficulty whatsoever with this expectation. In fact, I have always stood by the same principle in my professional life, whether as a diplomat, a UN official or an academic.

20. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion.
- a) Do you expect difficulties in your taking an independent position?
 - b) Would you be able to judge impartially whether an investigation by your government was genuine?

I expect to have no difficulty whatsoever in taking an independent and impartial position as a judge. In Japan, the Constitution demands the separation of powers, and it is a clearly established principle that the Government shall never interfere with the judicial branch. This is also true for international criminal tribunals including the ICC. Even currently, as a candidate, I am independent of the position of the Government of Japan regarding many issues involving the ICC, and never has there been a case in which I was given instructions or even suggestions from the Government to take a certain stance on a specific issue. Of course, once elected, I will leave the Government of Japan, as requested by the Rome Statute.

21. A judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.

I am fully confident that I will be able to fulfill a judge's responsibilities. Indeed, ever since beginning my professional career as a diplomat, I have repeatedly faced difficult and demanding tasks, which obliged me to give of myself 24/7. A sense of devotion and responsibility, which often produced a strong sense of accomplishment, always kept me going, whatever difficulties presented themselves.

22. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume? If yes, please explain.

None.

Thank you.