

NGO COALITION FOR THE INTERNATIONAL CRIMINAL COURT

- TEAM ON ICC RECRUITMENT -

ICC AND GEOGRAPHICAL REPRESENTATION AMONG STAFF

RESEARCH ON ALTERNATIVE SYSTEMS REGARDING
'DESIRABLE RANGES'

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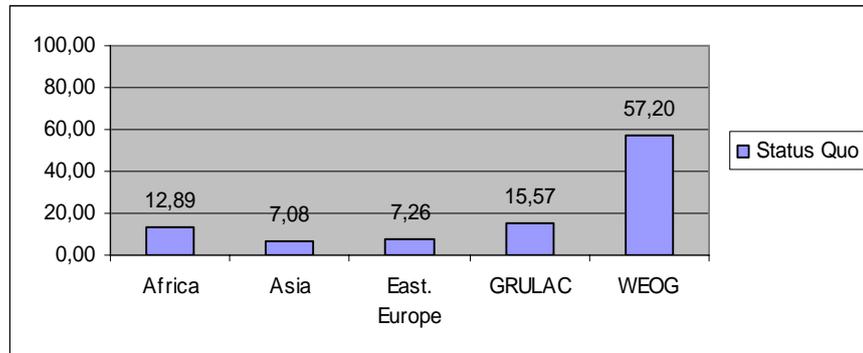
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Introduction

This paper serves to outline alternatives for the current system of geographical representation of the ICC's professional staff.

Concern has been raised with regard to the unequal representation of regional groups within the Court's staff. According to the current guidelines (see below), the Court targets to recruit



no less than 57,2% of the ICC's personnel from WEOG countries, and the four other regions share the remaining 42,8% (Africa 12,9%; Asia 7,1%, Eastern Europe 7,3%, GRULAC 15,6% - see chart).

It is argued that the legitimacy and fairness of the Court also depend on a staff that represents the international nature of the ICC's work. Further, as most of the Court's work takes place in Africa and the target percentage of African nationals is set at only 13% of the total staff, many believe that the current system of geographical representation could be improved.

This paper:

1. Explains the principles of the current system of geographical representation at the ICC;
2. Compares systems of representation at other international organizations; and
3. Presents three alternatives that seek to address some of the regional imbalance inherent in the system as currently applied by the ICC.

NB: This research should not be interpreted to be arguing for any model.

Charts: The charts below compare **regions** and not individual States Parties as this paper aims at addressing the regional imbalance described above, even though most systems of geographical representation do not take into account regional membership as such.

Sources: All data on geographical representation at the **ICC**, is obtained from the ICC itself or on the basis of calculations made by the CICC Secretariat. All data concerning other **international organizations** is based on the report "Comparison of Methods of Calculating Equitable Geographical Distribution within the United Nations Common System" of the Joint Inspection Unit of 1996 (JIU/REP/96/7) and available at www.unsystem.org/jiu/data/reports/1996/en96_07.pdf. Changes may have occurred in the meantime.

1. Geographical Representation at the ICC

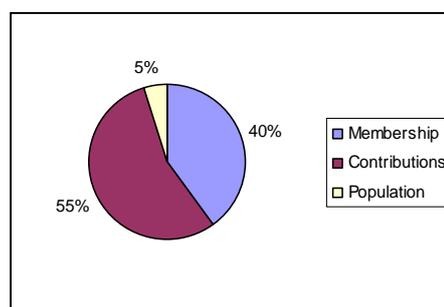
International organizations implement a system of "equitable geographical representation" in their human resources policies to ensure that also the organization's staff reflects its international character. These systems are based on calculations that prescribe a percentage

(mid-point) of the total staff (base number) that can be recruited from each member state. These calculations are made by combining a number of factors that vary per organization, often tailored to the mandate of the organization and the size of its staff.

The ICC applies the same system the UN Secretariat currently uses to determine its mid-point percentages. It is based on a resolution adopted at the first session of the ASP in 2002 (ICC-ASP/1/Res. 10), Article 4:

Geographical representation. For established (i.e., budgeted) posts, and in the case of appointments of at least 12 months' duration, the selection of staff in the Professional category shall be guided in principle by a system of desirable ranges based on that of the United Nations. Nationals from States Parties and from those States having engaged in the process of ratification of or accession to the Statute should have adequate representation on the staff of the Court; however, applications from nationals from non-States Parties may also be considered.

These 'desirable ranges' are target percentages of the ideal number of nationals to be recruited from a State Party. The percentages are calculated by considering three factors: the total number of Member States, a State's contribution to the budget and its population size. These factors are attributed with weights that determine the final outcome. Substantial weight is given to the membership factor (40%), which is equal for each Member State, most importance is given to the State's contribution to the organization's budget (55%) and the final 5% is determined according to the population size of the country (see chart).



For example, the target percentage of the Netherlands as a State Party to the ICC is calculated by adding 0.39% of the Court's professional staff on the basis of the Membership Factor (40% divided by 102 States Parties leaves 0.39% per State); 1.85% of the posts on the basis of the Contributions Factor (this number is different for every country and depends on the percentage the country contributes to the organization's budget); and 0.05% on the basis of the population factor. This totals 2.30% and is the Court's target percentage for Dutch nationals. If we do the same calculation for Benin, the result is 0.42% (Benin's assessed contribution to the budget is low), for Germany, it is 10.12% (currently, the largest contributor to the ICC's budget).

When more countries join the Court, this regional breakdown will change. Potential important non-WEOG contributors such as China, India, Japan and Russia can change the balance at the expense of WEOG. Also regions with relatively few States Parties can reduce the high percentage for WEOG when more countries join.

For reasons of comparison, the following three charts show what geographical distribution at the ICC would look like if only one of the three factors described above is applied.

Chart 1 shows geographical distribution when only the membership factor is applied. All of the Court's staff is distributed equally over the States Parties, giving each almost 1%.

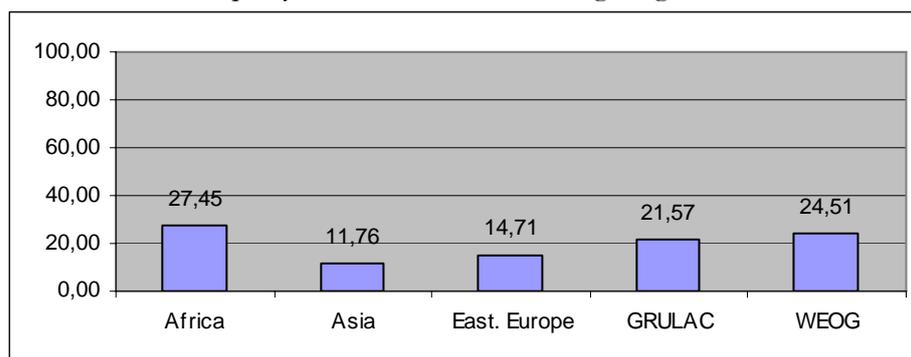


Chart 2 shows geographical distribution when only the contributions factor is applied. These figures reflect the percentage of what all States Parties per region contribute to the ICC's budget.

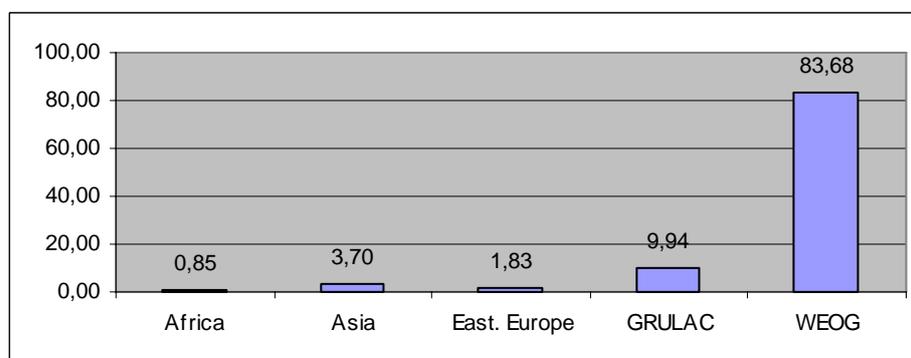
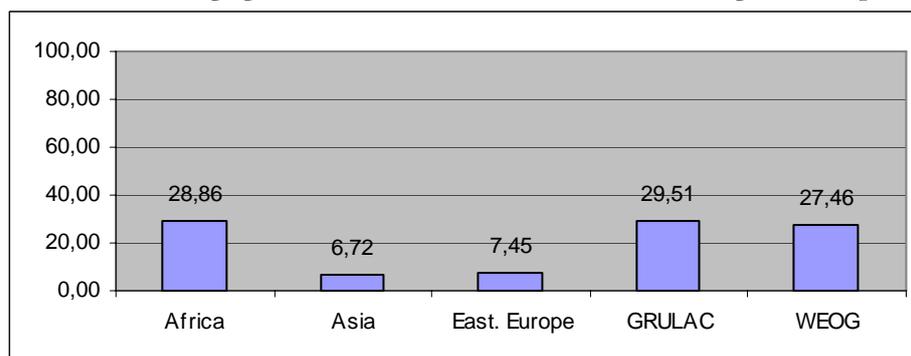


Chart 3 shows the geographical distribution when only the population factor is applied. The figures reflect the combined populations of the States Parties in the respective regions.



As shown above, the contributions factor makes the biggest difference in the ICC's system and the nationalities of the high contributors are better represented within the Court's staff. With the current membership of the ICC, most of these States Parties are located in the WEOG regional group (Western European countries, Australia, Canada and New Zealand). This regional balance can change when other countries ratify and the composition of the ASP's membership changes.

This system always applies only to permanent (minimum one-year contracts) professional (jobs that require an academic background) positions. Linguists, as translators and

interpreters, are generally excluded from geographical distribution. As a result, only a small percentage of for example the UN's staff is recruited under a policy of geographical representation. For the ICC, about one third of its staff is subject to the policy, the remaining two thirds are temporary staff, linguists or general personnel.

Many organizations and also the ICC apply a certain degree of flexibility. To ensure equitable geographical representation of Dutch nationals, the Court can deviate 15% from the 2.30% as explained above. This "desirable range" of Dutch nationals at the Court is between 1.94% and 2.66%. As the Court currently employs approximately 200 permanent professional staff, this results in a target of a minimum of four Dutch employees and a maximum of five.

2. Geographical Representation at Other Organizations

To give some context to the phenomenon of geographical representation, different approaches at organizations of the UN family are compared below. Organizations often have different percentages for desirable ranges, varying from 0% to 25%. Some organizations also have minimal quota. Additionally, a number of organizations apply weighted geographical distribution, higher posts counting more to a country's quota than lower posts. For reasons of parsimony, these additional criteria are not compared in this overview.

Where relevant, the percentage ratios are inserted between brackets. The ICC's system of a membership factor of 40%, a contributions factor of 55% and a population factor of 5%, would become **[M40-C55-P5]**.

Category 1:

- The United Nations Secretariat,
 - World Health Organization (WHO), and
 - United Nations Industrial Development Organization (UNIDO)
- Apply the same factors as the ICC **[M40-C55-P5]** as explained above.

Category 2:

- United Nations Development Program (UNDP),
- United Nations High Commissioner for the Refugees (UNHCR), and
- United Nations Children's Fund (UNICEF)

Do not implement a fixed policy of geographical representation, and only apply an empirical principle of geographical distribution.

Category 3:

- The International Telecommunication Union (ITU),
- World Meteorological Organization (WMO), and the
- International Maritime Organization (IMO)

Employ less staff members than they have member states and strive to recruit empirically equal numbers from regional groups, without applying set percentages.

Category 4:

- The International Labour Organization (ILO), **[M26-C74]**
- Food and Agriculture Organization (FAO), **[M19-C81]**
- United Nations Educational, Scientific and Cultural Organization (UNESCO), **[M70-C30]**

- International Civil Aviation Organization (ICAO), and the [M46.6-C53.4]
- World Intellectual Property Organization (WIPO) [M25-C75]

Apply only the membership factor and the contribution factor. The ILO, FAO and ICAO apply the contribution factor a posteriori, meaning that the percentages as stated in the brackets vary depending on membership and number of staff. WIPO's membership factor is applied to seven constituent regions as its number of employees is smaller than the number of member states.

Category 5:

- The Universal Postal Union (UPU) [M100]

Has a very small staff in comparison with the number of member states and only applies a *regional* membership factor

Category 6:

- The International Atomic Energy Agency (IAEA) [C100]

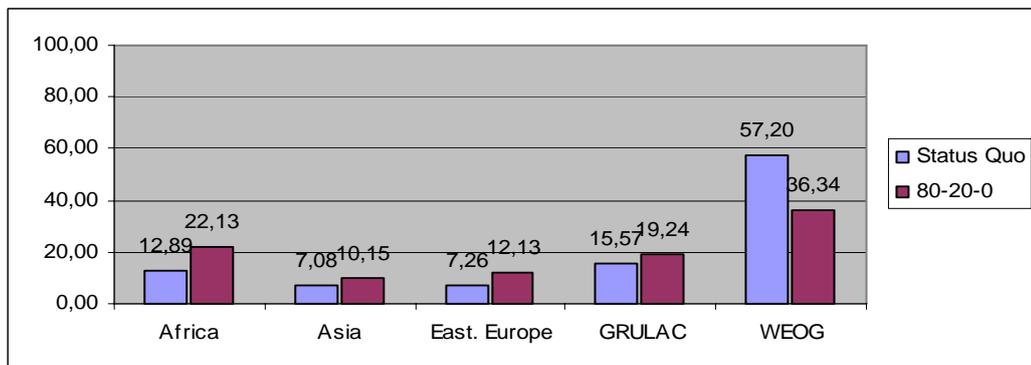
Applies an informal principle of geographical distribution solely based on member states' contributions.

3. Alternative Calculations of Geographical Representation

Three suggestions for alternative calculations of geographical representation are introduced below, partly using the methods that other organizations apply. The final model is specifically tailored to the mandate of the Court.

Alternative 1 [M80-C20] (see category 4 above):

Only the membership and contributions factors are applied. The chart shows the regional breakdown when the ICC would apply a membership factor of 80% and a contributions factor of 20%. As a result, all regions gain at the expense of WEOG and regions with more States Parties (such as Africa), win relatively more.

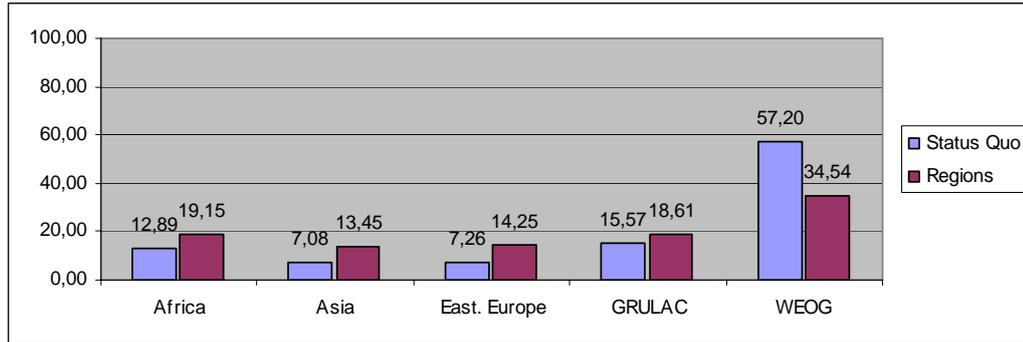


Advantage: States Parties are more equally represented.

Disadvantage: Balance can change (unexpectedly) when more countries join the Court.

Alternative 2 [M40-C20-RM40] (see category 5 above):

The chart shows geographical distribution with a membership factor of 40%, a contributions factor of 20% and an additional **regional membership factor** of 40%. The national membership factor divides 40% equally over all States Parties (i.e. 0.39% per state) and the regional membership divides 40% equally over all regions (i.e. 8% per region) and *then* over all States Parties in that region. Consequently, all regions win equally, again at the expense of WEOG. Especially regions with relatively few States Parties benefit from this.

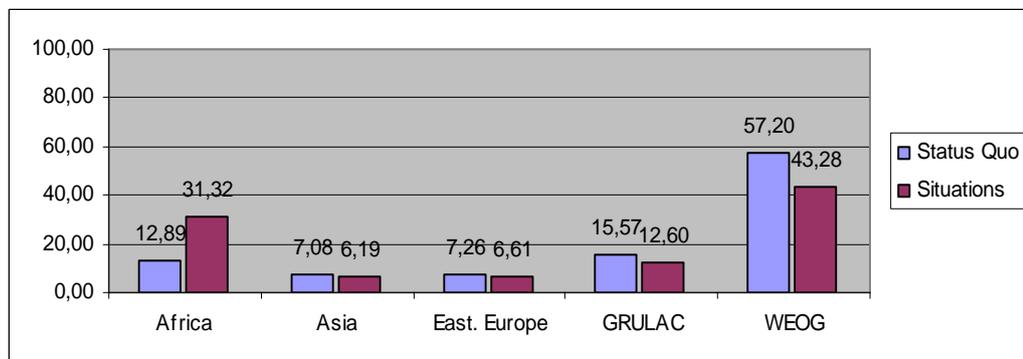


Advantage: regions with fewer States Parties are better represented.

Disadvantage: States Parties in regions with many *potential* States Parties might lose on the long term.

Alternative 3 [M40-C40-S20]:

The ICC has a special mandate that is very different from other existing international organizations. The Court runs potentially sensitive investigations in countries that are not necessarily a State Party or represented within the Court's staff. This can be the justification for introducing a new factor based on the region where, for example, the ICC is running investigations. The chart shows geographical representation with a membership factor of 40%, a contributions factor of 40% and a *situations* factor of 20% for the **region(s)** where the Court is running investigations. As all three of the Court's current investigations take place in Africa, this 20% is entirely divided among the African States Parties.



Advantage: reflects Court's work.

Disadvantage: poses a large burden and high expectation of flexibility on the Court's human resources division: investigations might come and go quicker than staff is recruited.