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# **GENDER EQUALITY AT THE INTERNATIONAL COURT OF JUSTICE: A FEMINIST ANALYSIS OF THE GENDER RATIO**

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## **Abstract**

The issue of the gender imbalance among the judges of the International Court of Justice has existed for an extremely lengthy period. International law is shaped in a significant way by the work of women judges at the ICJ. The International Court of Justice, which is regarded as the principal judicial branch of the UN, has historically had an unequal representation of women in its ranks.

Using a feminist viewpoint, this study attempts to address this problem of underrepresentation of women. The first section of the paper provides a brief description of the International Court of Justice's mission, operations, and responsibilities. The paper's second section then follows, outlining the ways in which the ICJ differs from previous international courts and tribunals. It additionally offers an unbiased comparison of the ICJ with other courts, with a particular emphasis on the proportion of female judges, to help you better grasp the gender ratio.

Furthermore, This paper attempts to highlight the importance of equal representation of gender at the International courts and tribunals in shaping global jurisprudence and promoting equality. Subsequently, we examine this matter via a feminist perspective, encompassing various feminisms such as liberal, radical, and Third World approaches to International Law (TWAIL) feminism.

Finally, we talk about some proactive steps that the ICJ could undertake to address and overcome the problem of gender imbalance. These actions include implementing mentorship programs, encouraging gender awareness, and making changes to the selection process and the International Court of Justice may improve its credibility, efficacy, and legitimacy as a worldwide adjudicator of justice by taking these steps into account.

## Introduction

The International Court of Justice (ICJ), commonly known as the "World Court," is the United Nations' (UN) premier judicial arm. It was founded in 1945 and is based in The Hague, Netherlands. It plays an important role in international law<sup>1</sup>. The International Court of Justice serves two purposes. For starters, it hears disputed matters, allowing sovereign governments to bring issues before the court if both parties agree to its authority. In some circumstances, the ICJ's judgements are legally binding and conclusive. It has authority over a wide range of problems, including territorial disputes, treaty interpretation, and state accountability.

Second, the International Court of Justice (ICJ) renders advisory opinions on legal issues presented to it by United Nations organisations and specialised agencies. While these views are not legally binding, they carry considerable weight and give professional advice on international legal issues.

The purpose of the court is to promote peaceful conflict settlement, preserve the rule of law, and make significant contributions to the advancement of international jurisprudence. The ICJ continues to play a critical role in tackling difficult international challenges and developing a regulatory framework that supervises state-to-state interactions via its judgements. It remains an important platform for the peaceful resolution of international conflicts, furthering the concepts of justice and equality on an international scale<sup>2</sup>.

The International Court of Justice has 15 members or judges. The United Nations (UN) General Assembly and Security Council elect these justices to the ICJ for nine-year mandatory tenure. But when we look at the history of the male to female gender ratio of the judges that are appointed in the ICJ, we can see a great difference. In this paper, we shall examine the gap between men and women at the ICJ by means of a feminist perspective, examining its historical context, influence on jurisprudence, and prospective solutions for achieving more gender equality.

## ICJ and other International Courts

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<sup>1</sup> 'International Court of Justice' <<https://www.icj-cij.org/court#:~:text=The%20International%20Court%20of%20Justice,began%20work%20in%20April%201946.>> accessed 9 October 2023.

<sup>2</sup> 'UN Documentation: International Court of Justice' <<https://research.un.org/en/docs/icj#:~:text=International%20Court%20of%20Justice%20Documentation&text=The%20Court%20has%20two%20functions,UN%20organs%20and%20specialized%20agencies.>> accessed 9 October 2023.

The International Court of Justice (ICJ) is a subsidiary of the Permanent Court of International Justice (PCIJ). The PCIJ was established in 1922, and at the height of its popularity in the late 1920s and early 1930s, it delivered around two judgements on contested issues each year. However, it increasingly lost regard for administrations beleaguered by the challenges caused by the global downturn and the emergence of fascism<sup>3</sup>. The International Court of Justice is the world's foremost judicial authority with a transnational jurisdiction. Since the commencement of the International Court of Justice, only 15 judges have been selected every preceding tenure since 1946. To maintain some stability, one-third of the members of the Court are chosen every three years<sup>4</sup> but the terms of the judges last for the total of nine years which are renewable in nature.

However, the representation of women as members of the ICJ has not been in a good state if we compare their number to the male representatives of the court. There are only four female judges in the history of ICJ till now. Dame Rosalyn Higgins was the first woman elected to the ICJ in 1995, and she also became the Court's first female President in 2006<sup>5</sup>. Therefore, a woman was seen as a judge in ICJ for the first time after a time span of almost 4 decades of its outset.

If we compare ICJ with the International Criminal Court i.e. ICC, we see that there are more female judges in ICC than ICJ. ICC comprises 18 judges in total and are elected for a duration of 9 years. Currently there are 9 female judges at the criminal court which makes the gender ratio to be equally proportionate amongst female and male judges<sup>6</sup>.

Women are mostly seen to be in lesser numbers than men in almost all the tribunals and international courts. However, The African Court on Human and Peoples' Rights which is currently with six female justices out of eleven, is the only court that offers a ray of hope. Women were only recently appointed as judges in several international courts, and such tribunals had no gender balance on their benches up until recently<sup>7</sup>.

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<sup>3</sup> Eric A. Posner, 'Is the International Court of Justice Biased?' (June 2005), *The Journal of Legal Studies*, Vol. 34, No. 2

<sup>4</sup> Rohan Abraham, 'How are judges elected to the international Court of Justice?' (*The Hindu*, November 2017) <<https://www.thehindu.com/news/international/how-are-judges-elected-to-the-international-court-of-justice/article20619816.ece>> accessed 9 October 2023.

<sup>5</sup> UN News 'Women in justice: Three trailblazing World Court judges send a powerful message' (United Nations, 10 March 2023) <<https://news.un.org/en/story/2023/03/1134487>> accessed 9 October 2023.

<sup>6</sup> International Criminal Court 'The judges of the Court' <<https://www.icc-cpi.int/sites/default/files/Publications/JudgesENG.pdf>> accessed 9 October 2023.

<sup>7</sup> Milena Sterio, 'Women as judges at International Criminal Tribunals' (2020), *Law Faculty Articles and Essays*, 1172.

## Role of women in International Courts

Women judges at the ICJ serve an important role in creating international law. Gender equality in the judiciary has always been imbalanced, especially at the International Court of Justice which is said to be the UN's primary judicial arm. Throughout the ICJ's existence, almost all of the judges have been men. There have only been two female ad hoc judges, namely Suzanne Bastid and Christine van den Wyngaert, who generally represent a state in a specific case when that State does not have a national on the Bench. Dame Rosalyn Higgins was the sole regular female judge<sup>8</sup>. International courts and tribunals are viewed as legitimate when they are fair and impartial, when they interpret and apply rules that are congruent with what states believe the law to be, and when they are transparent and democratic.

During an interview with UN News, the current women judges said that the progress and the growth towards the goal of having more women judges is relatively slow. According to Hillary Charlesworth, she read articles which indicated that when a variety of opinions from various backgrounds were represented around the table, the best conclusions were produced, and when you had an exclusive mindset, issues with decision making would arise. As a result, the important component of having some women surrounding the table is the range of opinions that the gathering gains and it also sends a sense of power and equality in a global setting.

Gender representation is important in international courts and tribunals since it has been proposed that women may approach disputes differently. Despite the scarcity of statistics on the subject, it is clear that a lack of gender inclusion damages the impression of credibility in courts and tribunals by creating a perceptible imbalance on the bench. Such an imbalance gives the impression that society as an entire is not fully represented<sup>9</sup>.

## Feminist Legal Analysis

Drawing on feminist jurisprudence ideas can deepen a feminist study of the underrepresentation of female justices at the International Court of Justice. Feminist jurisprudence illuminates how gender, power, and cultural norms interact with the legal system.

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<sup>8</sup> Radio Netherlands Worldwide, 'International: Female Judges Bring New Perspective to ICJ' (Peacewomen, 2010) <<https://www.peacewomen.org/content/international-female-judges-bring-new-perspective-icj>> accessed 9 October 2023.

<sup>9</sup> Andrea Samardzija, 'The future is female: Gender representation in International Courts and tribunals' (Leiden Law blog, December 2019) <<https://www.leidenlawblog.nl/articles/the-future-is-female-gender-representation-in-international-courts-and-tribunals>> accessed 9 October 2023.

Liberal feminism is a feminist perspective that primarily emphasises achieving gender equality through legal and political means. It advocates for women's rights and opportunities to be on par with those of men within existing legal and political systems. Key principles of liberal feminism encompass advocating for legal equality, such as equal pay for equal work and reproductive rights, as well as striving for economic empowerment by removing obstacles that hinder women's full participation in society<sup>10</sup>. Similar approach was taken into consideration during the Convention on the Elimination of All Forms of Discrimination Against Women in which articles 7 and 8 the convention are significant clauses that urge countries that are signatories to the treaty to guarantee equal access for women to public life, both at the national and international levels. Article 8, in particular, emphasises that States should make diligent efforts to ensure that women have equal opportunities to participate in the activities of international organisations. This has direct relevance to the Court's operations<sup>11</sup>. The underrepresentation can be seen as a breach to the clauses as well as the feminist interpretation.

Radical feminism concentrates more on the structural change of a subject matter and goes a little further than just equal legal opportunities. The lack of female representation at the ICJ can be viewed as a manifestation of this structural oppression, where male dominance is maintained and reinforced.

Feminist scholars contend that the inadequate nomination and election of judges from both genders represents a breach of states' international legal responsibilities. According to Article 8 of the UN Charter of 1945, the UN is obligated to ensure that men and women have equal opportunities to participate in all capacities within its principal and subsidiary bodies, without any discriminatory restrictions<sup>12</sup>.

This underrepresentation of women in ICJ can also be studied through the TWAIL feminism approach. TWAIL i.e. Third World Approaches to International Law, provides a viewpoint that underscores the interplay between gender, race, and international law. It focuses on how these dynamics impact the presence and encounters of women, especially those hailing from the Global South, within international legal bodies such as the ICJ<sup>13</sup>. Recognising the significance of intersectionality, TWAIL feminism emphasises how women's experiences at the ICJ are

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<sup>10</sup>Camilla Cottias 'Liberal Feminism' <[https://igg-geo.org/wp-content/uploads/2021/08/IGG\\_CCottias\\_Liberal\\_feminism2020.pdf](https://igg-geo.org/wp-content/uploads/2021/08/IGG_CCottias_Liberal_feminism2020.pdf)> accessed 9 October 2023.

<sup>11</sup> Convention on the Elimination of All Forms of Discrimination against Women 1981

<sup>12</sup> Charter of the United Nations 1945, Art.8

<sup>13</sup>Giovanna Maria Frisso, 'Third World Approaches to International Law: feminists' engagement with international law and decolonial theory' (published 2019) 479-498

influenced not just by their gender but also by their nationality, ethnicity, and socioeconomic status. Numerous female judges in the ICJ, especially those from the Global South, confront additional difficulties because of structural inequalities and the legacy of colonialism. If we look from this perspective, this colonial legacy of male domination within international law can also impact the selection and treatment of women judges at the ICJ, where certain perspectives may be marginalised or undervalued. TWAIL feminist analysis of the inadequate representation of women at the ICJ enables a more thorough analysis of the structural and historical causes that have given rise to this gender gap. In order to encourage more diverse genders at the ICJ and within the wider field of international law, it points out the need to address intersectionality issues, colonial legacies, and uneven access to opportunities.

## Conclusion

Women's underrepresentation at the International Court of Justice (ICJ) is a complex problem that has to be addressed. Since the ICJ's founding in 1945, only a small number of female judges have held judicial positions there, perpetuating this gender disparity. This discrepancy reflects greater difficulties facing the legal profession and the topic of international law.

The complexity of this issue is clarified through a feminist approach that incorporates a number of feminist jurisprudential perspectives. The linkages of gender, racism, and international law are emphasised, as well as the specific challenges faced by female judges.

In addition to being important for representation, women judges at the ICJ also contribute to the development of jurisprudence. Women judges offer a variety of viewpoints and experiences to the bench, impacting the court's legal analysis and rulings, particularly in issues involving gender equality as well as human rights. Proactive steps are required to rectify the lack of representation of women at the ICJ. These include changes to the selection process, mentorship initiatives, classes on gender sensitivity, lobbying efforts, and a dedication to upholding gender equality-related international standards and duties.

Achieving gender equality at the ICJ is not only an issue of justice but also a way to increase the court's efficacy and credibility in a global setting whereby inclusion and plurality are increasingly recognised as necessary for legitimacy and fairness.