

**Candidature of Professor Marc Bossuyt (Belgium) for election  
to the post of Judge in the International Criminal Court**

**Nomination statement**

In accordance with paragraph 7 of the Resolution on the procedure for the election of judges at the International Criminal Court and article 36 of the Rome Statute of the International Criminal Court, the Belgian Government has the honour to transmit the following nomination statement on the aforesaid candidature:

**A. Information on Professor Bossuyt's moral qualities (cfr. article 36, paragraph 3, subparagraph (a) of the Statute)**

For several of Professor Bossuyt's professional activities, qualities such as a high moral character, impartiality and integrity, were explicit formal prerequisites:

- He served in his personal capacity (1981-85 and 1992-99) as one of the 26 independent experts in the UN-Sub-Commission on Prevention of Discrimination and Protection of Minorities (since 1999: Sub-Commission on the Promotion and the Protection of Human Rights). In 2000, he was elected member of the Committee on the Elimination of Racial Discrimination (CERD). Article 8 of the Convention on the Elimination of all Forms of Racial Discrimination defines CERD-members as "18 experts of high moral standing and acknowledged impartiality".
- In his capacity as Commissioner-General for Refugees and Stateless Persons (1987-97), he headed the independent administrative authority in charge of the procedure for the determination of the status of refugee in Belgium.
- As Chair/Rapporteur of the Working Group on the Draft Declaration of the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), he contributed significantly to the conclusion of delicate and sensitive negotiations.

In 1997, he was appointed Judge at the Court of Arbitration ('Cour d'arbitrage'), the Belgian Constitutional Court operating independently from the legislative, judiciary and executive powers. Hence, he fulfilled the conditions listed in paragraph 1, subparagraph b) of the Special Law of 6 January 1989 on the Court of Arbitration.

**B. Information on the Belgian candidate's professional qualities (cfr. article 36, paragraph 3, subparagraph (b) of the Statute)**

As the following survey illustrates, Marc Bossuyt has established competence:

- in the area of human rights law, e.g. as professor of international law as well as in various capacities in the United Nations system for the promotion of human rights;
- in the area of humanitarian law, e.g. as Belgian Commissioner-General for Refugees and Stateless Persons;
- in a professional legal capacity, which is of relevance to the judicial work of the Court: since 1997 he is judge in the Court of Arbitration, the Belgian Constitutional Court.

**I. Competence in the area of human rights law**

**a) Academic Background:**

After his graduation as doctor juris from law school at Ghent University (Belgium) in 1968, Marc Bossuyt opted to specialise in human rights law, as is illustrated by the following academic titles:

- Diploma of International and Comparative Law of Human Rights of the International Institute of Human Rights, Strasbourg, France (1972)
- "Docteur ès sciences politiques" of Geneva University, Switzerland (Graduate Institute of International Studies) with a Ph.D. thesis on "L'interdiction de la discrimination dans le droit international des droits de l'homme" (The prohibition of discrimination in the international law of human rights).

**b) Academic career**

Marc Bossuyt is a professor at Antwerp University (Belgium) since 1977. He teaches international law and the law of international organisations, including the international protection of human rights and international humanitarian law.

Universities in Africa, North America and Europe have frequently invited him as a visiting-professor. Besides, he has given numerous lectures, mainly on human rights law

In addition, he has published extensively on various aspects of international human rights law and refugee law in books, articles, reports, etc... Full details can be found in the CV hereto attached.

### **c) United Nations system for the promotion of human rights**

*In various capacities Professor Marc Bossuyt played a very active role in a number of United Nations bodies for the promotion of human rights, such as*

#### **1. The UN-Sub-Commission on Prevention of Discrimination and Protection of Minorities** **(since 1999: UN-Sub-Commission on the Promotion and the Protection of Human Rights)**

- *Mandates: 1981-83, 1984-85, 1992-95 and 1996-99.*
- *Rapporteur (1992 & 1997) and Vice-Chair (1983 & 1999)*
- *Member (1982-84) and Chair/Rapporteur (1985) of the Working Group on Human Rights Communications*
- *Field-mission in Mauritania (1984)*
- *Member (1996-97) of the Working Group on Contemporary Forms of Slavery*
- *Special Rapporteur for studies on:*
  - a) *The Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (1985-88) adopted by the UN-General Assembly in 1989*
  - b) *The concept and practice of affirmative action (1999-2002)*

*The members of the Sub-Commission are elected by the Commission on Human Rights*

#### **2. The United Nations Commission on Human Rights**

- *Representative of Belgium to the UN-Commission on Human Rights (1986-88 and 1989-91)*
- *Vice-Chair in 1986 and Chair of the Commission in 1989 when it adopted the Convention on the Rights of the Child and the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty*
- *Member (1987) and Chair/Rapporteur (1988) of the Working Group on Human Rights Situations.*

#### **3. The Committee on the Elimination of Racial Discrimination (CERD)**

- *Member (term 2000-2004) and Rapporteur (2001)*
- *CERD-members are elected by the 158 States-Parties to the Convention on the Elimination of all Forms of Racial Discrimination.*
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#### **The relevance of this experience for the activities of the International Criminal Court**

*Professor Marc Bossuyt is familiar with the in-depth analysis of complex information on human rights situations. In of both the Sub-Commission's and the Commission's Working Groups, he acquired valuable experience, as he examined whether human rights communications reveal the existence of a consistent pattern of gross and reliably attested violations of human rights.*

*In view of the crimes (genocide, war crimes, crimes against humanity) to be investigated by the Court, it is worth mentioning the potential relevance of his thorough knowledge of the nature and mechanisms of racism, discrimination and the non-observation of the rights of minorities, phenomena that might be linked with these crimes.*

### **II. Competence in the area of humanitarian law**

*As Commissioner General for Refugees and Stateless Persons, the independent administrative authority on refugee determination in Belgium (1987-97), Marc Bossuyt acquired an extensive knowledge of the principles and practice of international humanitarian law.*

*In this capacity, he examined, inter alia, applications by individuals with respect to whom there were serious reasons to consider they had committed a crime against peace, a war crime, or a crime against humanity.*

*There may be a link between refugee situations and the crimes to be investigated by the Court (genocide, war crimes and crimes against humanity).*

*As a professor of international law, he dealt periodically with problems of humanitarian international law in his advanced course of international law for fifth year's law students.*

**III. The extensive experience of Judge Marc Bossuyt in a professional legal capacity, which is of relevance to the judicial work of the Court**

In he was appointed, on the recommendation of the Belgian Senate, judge of the Court of Arbitration, the Belgian Constitutional Court. Hence, Judge Marc Bossuyt is well acquainted with judicial procedures at the highest level.

In addition, Judge Marc Bossuyt's activities are relevant to the judicial work of the International Criminal Court, particularly since the Court of Arbitration ensures respect by the legislature of human rights and fundamental freedoms, including those guaranteed by international treaties:

- Article 142 of the Belgian Constitution gives the Court of Arbitration the exclusive authority to review regulations that have force of law for compliance with the rules that determine the respective powers of the State, the Communities and the Regions.
- Since the constitutional amendment of 1988, the Court also has the authority to pronounce judgement on any violation by acts having force of law of three basic rights and liberties guaranteed by the Constitution, namely the principle of equality (article 10), the prohibition of discrimination (article 11), and the right to and freedom of education (article 24).
- In its jurisprudence, the Court of Arbitration has extended its jurisdiction to include other basic rights and liberties. According to this jurisprudence, articles 10 and 11 of the Constitution have a general scope in that they forbid any discrimination, irrespective of its nature, so that the constitutional rules of equality and non-discrimination apply with respect to all rights and liberties that have been granted to Belgian citizens, either by the Constitution or by directly applicable rules of international treaties.

**C. Command of the Court's working languages (cfr. article 36, paragraph 3, subparagraph c of the Statute)**

Judge Marc Bossuyt's native language is Dutch, one of Belgium's three official languages. His excellent knowledge of written and spoken French and English is documented in his CV hereto attached:

- He studied in English at the Bologna Centre of the School of Advanced International Studies of the Johns Hopkins University in Italy (1968/1969) and in French and English at the 'Institut Universitaire de Hautes Etudes Internationales/Graduate Institute of International Studies' at Geneva, Switzerland. (1969-1973)
- His doctoral thesis on "L'interdiction de la discrimination dans le droit international des droits de l'homme" was written in French. His main other publication, "Guide to the 'travaux préparatoires' of the International Covenant on Civil and Political Rights", was published in English. His bibliography indicates that he publishes frequently in English and in French.
- His fluency in French and English was a distinct advantage for his various activities in the United Nations system for the promotion of human rights.

**D. The choice between list A and List B (cfr. paragraph 5 of article 36 of the Statute)**

In view of the elements presented in Section A.2 of this nomination statement and the CV hereto attached, it is obvious that the Belgian nominee, as a professor of international law, a constitutional judge and a United Nations expert in the field of human rights, should be included on **list B** containing the names of candidates with the qualifications specified in Article 36, paragraph 3 (b) (ii) of the Statute.

**E. Information relating to subparagraphs (i) to (iii) of paragraph 8 (a) of article 36 of the Statute:**

The Belgian Government did take into account the following criteria as far as possible:

**1. The adequate representation of the principal legal systems of the world:**

Nominating Professor Marc Bossuyt for the post of Judge of the International Criminal Court, the Belgian Government hopes to contribute to an equitable representation of the principal legal systems of the world in this Court, notably the civil law system.

**2. An equitable geographical representation:**

The Benelux-countries have agreed to present a single candidate for election to the post of Judge of the International Criminal Court, as was the case in elections for other international Courts and Tribunals.

In addition, for more than 50 years, no Belgian national has been entrusted with a full-time mandate as Judge of the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda or the International Tribunal for the Law of the Sea.

3. A fair representation of female and male judges:

*The Belgian nomination procedure was open to both men and women. When nominating candidates for high offices in the international judiciary system, the Belgian Government wishes to respect, inter alia, a gender balance.*

*Hence, in the recent past, female Belgian candidates were presented and elected to the post of Judge at the European Court for Human Rights in Strasbourg and ad-litem Judge at the International Criminal Tribunal for the Former Yugoslavia in The Hague.*

**E. Information on the expertise of the candidate in certain areas (cfr. paragraph 8 (b) of article 36 of the Statute)**

Section B. of this document contains information on the Belgian candidate's expertise in areas such as:

- *the in-depth analysis of complex information on delicate human rights situations*
- *the prevention of discrimination, racism and the protection of the rights of minorities*
- *international humanitarian law*

*In addition, he presented in 2002, in his capacity of Special Rapporteur of the UN-Sub-Commission on the Promotion and the Protection of Human Rights, his final report on the concept and the practice of affirmative action.*

**F. The nationality of the candidate (cfr. paragraph 7 of article 36 of the Statute)**

*Judge Marc Bossuyt is a national of Belgium.*