


## INTRODUCTION

# INTERNATIONAL LAW & PRACTICE: SYMPOSIUM ON THE EFFECT OF INTERNATIONAL JUDGES' PERSONAL CHARACTERISTICS ON THEIR JUDGING

## The effects of international judges' personal characteristics on their judging

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### Abstract

This Symposium Issue looks at how personal traits of international judges matter in their judging. The articles selected shed light on the ways that international judges' personality, that is, their character differences and personal backgrounds, shape, control, or modify their conduct and their rulings. The articles in the Symposium reveal that individual international judges have different personal attributes and identities that affect: (i) different aspects of judicial reasoning, problem-solving and case management; (ii) the ways judges interact, deliberate and affect each other in collectively deciding cases; and (iii) the outcomes of international trials. This Symposium, therefore, looks beyond the traditional 'legal formalistic' understanding (prevalent also among international judges themselves) that judges – as impartial, rational, and mechanical decision-makers – simply apply existing, recognized rules or principles of law to the facts and questions before a court in the context of concrete cases without regard to any personal leanings and biases. It examines how and to what extent judges at international courts make their choices conditioned on their personal identity characteristics, and when such characteristics exhibit greater or lesser effects on their decision-making.

**Keywords:** international judges; international judicial behaviour; judicial deliberations/decision-making; judicial impartiality/biases; personal characteristics

### 1. Introduction

The belief that it is not acceptable for a judge to allow their personal backgrounds to sway their decision in favour of, or against, parties before the court is shared by most judges, including those

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This symposium issue brings together the papers presented and discussed at the conference 'How Personal Characteristics of International Judges Affect Their Rulings: Socio-Legal Perspectives' that we co-organized at iCourts, University of Copenhagen on 26 August 2020. We thank Lee Epstein, Mikael Rask Madsen, Erik Voeten, Gleider Hernández, Loveday Hodson, Urška Šadl, and Veronika Fikfak for participating in this conference and for their valuable comments.

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on international courts. But do international judges really interpret and apply international legal norms, find facts, and rule on cases similarly, thus arriving at identical factual and legal conclusions irrespective of their personal backgrounds?

As Lee Epstein and Jack Knight note in this volume,<sup>1</sup> a small but growing body of literature in the field of legal decision-making that examines the relationship between personal characteristics and judging does not support the above opinion of judges. These studies have indeed found some minor differences – dependent on personal backgrounds and biographies of individual judges – in judicial decision-making on both domestic and international courts, with these differences mostly limited to specific contexts where the personal characteristics considered were particularly salient. There is, however, no clear-cut evidence that international judges systematically employ any demographics or background-related biases in their judging. Adopting legal, sociological, and political science perspectives on how international judges' personality, that is, their character differences and personal backgrounds shape, control, or modify their conduct and their rulings, this Symposium focuses on how judges on international courts do engage in judicial decision-making, rather than assuming how international judges approach and carry out their judicial business, or considering how they should engage in judging. The central idea of this socio-legal approach is that individual international judges have different personal attributes and identities that affect: (i) different aspects of judicial reasoning, problem-solving, and case management; (ii) the ways judges interact, deliberate, and affect each other in collectively deciding cases; and (iii) the outcomes of international trials. Our aim is to explore how these identities and demographic characteristics of international judges operating on both individual and group levels contribute to their decision-making and accordingly affect their impartiality.

From the International Court of Justice (ICJ), the World Trade Organization Appellate Body, international human rights courts – including the European and the Inter-American Courts of Human Rights (IACtHR) – courts of regional integration agreements, such as the Caribbean Court of Justice (CCJ), to international criminal tribunals, our authors look closely at how individual traits and personal experiences of international judges potentially affect their attitudes, preferences, and choices on the international bench. Through empirical studies, qualitative data analysis, detailed literature review, and theoretical interventions, we see the multitude of ways in which personal characteristics of international judges affect their behaviour and the outcome of international judicial proceedings.

This Introduction proceeds in three parts: In the next section, we explain the personal characteristics that are usually found in the existing studies on the international judiciary and discuss their impact on international rulings. This description of international judges' personal backgrounds and their influences is followed by an overview of judicial behaviour literature in international law that examined how certain personal characteristics operate in relation to judges taking part in the international legal process. As we shall see below, this body of literature has grown considerably in the past few years, especially as regards researching how international judges' past roles and identities (notably gender, nationality and religion) affect their judging. However, the literature on the potential role of other personal experiences and characteristics of international judges in their judging (such as race/ethnicity, age, gender identity/sexual orientation and socio-economic status) remains scarce, suggesting ample opportunities for scholarship. Finally, we turn to introduce the Symposium and explain its contribution to the literature on international judicial behaviour.

<sup>1</sup>L. Epstein and J. Knight, 'How Social Identity and Social Diversity Affect Judging', in this issue, doi: [10.1017/S0922156522000395](https://doi.org/10.1017/S0922156522000395).

## 2. What are personal characteristics, and how do they affect international judging?

Personal characteristic is an identifiable and objective attribute or status, by which individuals or groups are distinguishable from one another. Identity of international judges – specifically, demographic factors – is one possible way in which judicial attitudes might affect the act of judging, including in international courts. The list of personal characteristics of particular importance for our Symposium articles includes gender, national origin, religious belief, age, as well as career experience and education. Below we define each of these characteristics and undertake to give an overview of what we know about the influence of judges' personal backgrounds on international judicial behaviour and international rulings. In the context of national courts, the research into this subject – apart from judges' career paths and partisanship – is of more recent origin and mostly focuses on the role played by increasingly diverse judiciary and its importance for the courts' substantive decision-making and for the legitimacy of courts and their rulings.<sup>2</sup> This relatively new literature can be summarized into four basic theories that help explain why judges with different personal attributes and backgrounds might reach different sorts of conclusions.

The first theory is mostly applicable to the judges' gender, although it can be used – in different contexts – for other personal attributes of judges as well. This theory suggests that female judges or judges of ethnic, religious, and other minority backgrounds bring different voices and perspectives to trials and judicial decision-making – especially in cases involving such backgrounds – than, for example, male and/or white judges who historically dominated the legal system and the judicial profession.<sup>3</sup> According to this theoretical view, white male judges' opinions are masculine, thus favouring logic and justice, while female or non-white judges' voices are more committed to 'obligations, relationships, and problem solving through personal communication'.<sup>4</sup>

A second theory on the relationship between the judges' personal attributes and judging is information-based and posits that the prediction that judges with different backgrounds will rule differently on cases arises from different and unique knowledge, expertise, and experience that non-white/non-male judges bring to the bench.<sup>5</sup> This specific knowledge and experience comes to the fore, particularly in cases or issues pertaining to race, ethnicity, gender, religion or any other relevant background of such judges.

A third theoretical approach draws on an 'in-group bias (favouritism)' argument and entails that female judges or judges who belong to national, racial, ethnic, religious, and other minority groups seek to promote the interests and policy preferences of their own group,<sup>6</sup> thus making substantially different decisions and reaching different conclusions than their colleagues as non-members of such groups.

A fourth theory that can be resorted to in seeking to better understand the effects of judges' personal characteristics on their behaviour and rulings is social background theory. This theoretical approach to judicial decision-making accounts specifically for the fact that judges are a product of their identities and experiences. As a result, this theory treats personal attributes and experiences of judges as an explanation for their actions.<sup>7</sup>

Given that all of the international courts studied as part of this Symposium are collegial by nature, and as such, may sit in smaller or larger panels/chambers (including *en banc*), due regard should also be paid to 'panel effects'. The idea of panel effects implies that judges might not only

<sup>2</sup>*Ibid.*

<sup>3</sup>A. Harris and M. Sen, 'Bias and Judging', (2019) 22 *Annual Review of Political Science* 241, at 247.

<sup>4</sup>C. L. Boyd, 'Representation on the Courts? The Effects of Trial Judges' Sex and Race', (2016) 69 *Political Research Quarterly* 788, at 789.

<sup>5</sup>*Ibid.*

<sup>6</sup>*Ibid.*; C. Holst and S. A. Langvatn, 'Descriptive representation of women in international courts', (2021) 52 *Journal of social philosophy* 473.

<sup>7</sup>T. George and T. Weaver, 'The Role of Personal Attributes and Social Backgrounds on Judging', in L. Epstein and S. Lindquist (eds.), *The Oxford Handbook of U.S. Judicial Behavior* (2017), 286.

reach different conclusions as a result of their different personal characteristics but also influence the choices and opinions of other panel members.

In the following sections, we introduce these characteristics of international judges and explain how each of them affects their decision-making.

### 2.1 The effects of judges' gender

The term 'gender' is sometimes confused with the term 'sex', or the two notions are used interchangeably. In legal discourse, the expression 'sex' is typically used to describe the individual or group's biological and physiological reality, that is, genetically determined characteristics and differences that define men and women, such as average differences in physical strength or differences related to pregnancy. The word 'gender', however, refers to 'social' differences between women and men – the differences that can be classified as socially constructed rather than biological in nature. 'Gender' is, thus, used for categories of feminine and masculine roles, behaviours, activities, and attributes assigned to men and women/boys and girls. Good examples of such a social reality of 'gender' learned through the process of socialization are differences between men and women, boys and girls, between men and between women, between parent and child and so on.<sup>8</sup> For our purposes, the gender effects on international adjudication primarily concern the question of how biological differences and social constructs of male and female roles, and the different experiences they lead to, affect international judicial processes.

Gender is the personal characteristic that has attracted most interest in the literature on international judges and their behaviour at international courts, being also of substantial institutional interest. There has been a rapidly growing number of studies – including empirical ones – on whether and how judges' gender might matter in both appointing these judges to international courts as well as in their judging at these courts. These studies have focused on a specific international court or compared several international courts (working in the same issue areas or across different subject areas).<sup>9</sup>

### 2.2 The effects of judges' nationality

According to the definition contained in Article 2(a) of the 1997 European Convention on Nationality, 'nationality' is a purely legal and objective concept. It refers to a specific legal bond or relationship between an individual and a state which is recognized by that state and is, as such, based on the nationality legislation valid in a given state. The nationality of a specific person can thus be established on the basis of such legislation. In that sense, the term 'nationality' can be considered to be synonymous with 'citizenship', but should be distinguished from the individual's 'ethnic origin'.<sup>10</sup> Along similar lines, the ICJ defined the concept of nationality in *Nottebohm* as 'a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties'.<sup>11</sup>

<sup>8</sup>D. Schiek, L. Waddington and M. Bell, *Cases Materials and Text on National, Supranational and International Non-Discrimination Law* (2007), at 70–1.

<sup>9</sup>N. Grossman, 'Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?', (2012) 12 *Chicago Journal of International Law* 647; S. Hennette Vauchez, 'More Women – But Which Women? The Rule and Politics of Gender Balance at the European Court of Human Rights', (2015) 26 *EJIL* 195; F. Ní Aoláin, 'More Women – But Which Women?: A Reply to Stéphanie Hennette Vauchez', (2015) 26(1) *EJIL* 229; N. Grossman, 'Achieving Sex-Representative International Court Benches', (2016) 110 *AJIL* 82; several chapters in F. Baetens (ed.), *Identity and Diversity on the International Bench: Who is the Judge?* (2020); E. Voeten, 'Gender and judging: evidence from the European Court of human rights', (2021) 28 *Journal of European Public Policy* 1453; J. L. Corsi, 'Legal justifications for gender parity on the bench of the International Court of Justice: An argument for evolutive interpretation of Article 9 of the ICJ Statute', (2021) 34 *LJIL* 977.

<sup>10</sup>Explanatory Report to the European Convention on Nationality ETS 166, at 22–3.

<sup>11</sup>*Nottebohm Case (Liechtenstein v. Guatemala)*, (second phase), Judgment of 6 April 1955, [1955] ICJ Rep. 4, at 23.

The analysis of the effect of national identity on international judicial decisions has a long pedigree, in part because of the very nature of international courts being composed of judges of diverse nationalities. Legal and political science research has shown that judges on international courts, such as those of the ICJ and the ECtHR display national (home-state) bias in their individual opinions and rulings, exhibiting a more lenient attitude towards their home states than toward others.<sup>12</sup> This literature has also found that international judges who previously served as diplomats evince more national bias than international judges who did not have previous careers as diplomats.<sup>13</sup>

### 2.3 The effects of judges' religion or belief

The notion of 'religion' or 'belief' covers any religion, religious belief, or similar philosophical belief. It is evident from the relevant international legal texts and case law (especially those relating to the freedom of religion and belief) that the concept of religion extends to all existing and recognized religions and faiths. For the purposes of studying international judicial behaviour, it is not necessary that an international judge is a member of a certain religious group, community or denomination that is officially recognized by the national authorities. Instead, fulfilment of some general criteria – such as public recognition and common opinion as to the religious character of such a group, community or denomination – will suffice.<sup>14</sup> Although the two notions – 'religion' and 'belief' are to some extent similar, there is an important difference between them as to the existence of a divine being, deity or God. Indeed, this element of divinity is an essential part of the definition of 'religion', whereas it is expressly omitted in the definition of 'belief'. Accordingly, belief can be defined as a 'coherent set of fundamental ideas and attitudes to life and human existence, without reference being made to a higher being'.<sup>15</sup>

As with some other personal characteristics, an individual judge's religious belief might often not be known unless they confess their faith or openly talk about it. Likewise, an international judge's religion or lack of religion might come to the fore in particularly sensitive human rights litigations touching upon controversial moral questions of human life and death such as abortion and euthanasia as well as those concerning LGBT rights issues. Some studies have, thus, looked into the possible role of religion in selecting/appointing international judges, but also in international human rights adjudication,<sup>16</sup> notably in the freedom of religion matters and cases involving a complex relationship between women's human rights and religion (for example, abortion rights).<sup>17</sup> Other contributions have considered whether there is a religious diversity gap on the international bench and justifications for the promotion of such diversity among international judges, including the enhancement of the international courts' normative legitimacy, fight against systematic religious discrimination and the 'value-added' argument.<sup>18</sup> Furthermore, one study also

<sup>12</sup>I. Ro Suh, 'Voting Behavior of National Judges in International Courts', (1969) 63 AJIL 224; M. Kuijer, 'Voting Behavior and National Bias in the European Court of Human Rights and the International Court of Justice', (1997) 10 LJIL 49; E. Posner and M. de Figueiredo, 'Is the International Court of Justice Biased?', (2005) 34 *Journal of Legal Studies* 599; E. Voeten, 'The Impartiality of International Judges: Evidence from the European Court of Human Rights', (2008) 102 *American Political Science Review* 417; S. Dothan, 'The Motivations of Individual Judges and How They Act as a Group', (2018) 19 *German Law Journal* 2165; C. Titi, 'The Identity Conundrum: Legitimacy and Doubt on the International Bench', in Baetens, *supra* note 9.

<sup>13</sup>F. J. Bruinsma, 'Judicial Identities in the European Court of Human Rights', in A van Hoek et al. (eds.), *Multilevel Governance in Enforcement and Adjudication* (1996).

<sup>14</sup>Schiek, Waddington and Bell, *supra* note 8, at 105–8.

<sup>15</sup>*Ibid.*, at 117–18.

<sup>16</sup>S. B. Bossa and G. L. Dossan, 'Ethnicity, Religion, and Diversity at the International Criminal Court: Is More Too Much?', in Baetens, *supra* note 9.

<sup>17</sup>D. Koev, 'Not Taking it on Faith: State and Religious Influences on European Court of Human Rights Judges in Freedom of Religion Cases', (2019) 18 *Journal of Human Rights* 184; K. Hessler, 'The Significance of Religious Diversity in International Human Rights Adjudication', in Baetens, *ibid.*

<sup>18</sup>D. M. Bigge, 'Justifications for the Promotion of Religious Diversity on the International Bench', in Baetens, *ibid.*

surveys individual (separate and dissenting) opinions by ICJ judges looking therein for religious text citations to establish whether these judges incorporate their religious identity in their judging.<sup>19</sup> Nevertheless, much more in-depth research remains to be done to truly assess the impact of religion/lack of religion on international judging, such as whether religious international human rights judges are more willing to support claims of religious liberty than their less devout or irreligious colleagues.

#### 2.4 The effects of judges' age

The concept of 'age' is contained or referred to in many international and national legal instruments (especially those prohibiting discrimination on the grounds of age), but these legal documents scarcely provide any definition of this notion, nor do they give any explanation of the meaning of 'age'. Indeed, the meaning of 'age' would seem to be self-evident also in relation to international judges, as it would simply seem to refer to distinctions between younger and older judges. A central variable in this context is chronological age, defined as 'the time that has passed since the birth of an individual'.<sup>20</sup> Chronological age, in our case, can be used to indicate the stage to which an individual international judge (or a group of international judges) has progressed in the ageing process and to determine whether a particular international judge is, for instance, part of the group of older international judges. However, particular issues arise in respect of age as a personal characteristic that distinguishes age from other personal attributes. Given the fluid and indeterminate nature of age groups, individuals do not remain fixed within particular groups, and age-based assumptions by others about individuals of particular ages often change. Likewise, an individual judge's age alters over time, meaning that she may have different goals, expectations, and relationships with fellow judges during the course of this process.

Most international judges are in the later stages of their careers, aged between 50 and 70.<sup>21</sup> In recent years, however, a moderate trend towards nominating/appointing/electing younger judges (in their thirties or early forties) to certain international courts, especially those operating in Europe (such as the European Court of Human Rights (ECtHR)) can be observed.<sup>22</sup> Although this may be perceived as an asset for some international courts – given that younger international judges can bring some new perspectives into judicial decision-making at these courts, different world views and convictions, as well as different kinds of sentiments concerning key issues – their presence on the international bench may also raise concerns about their judicial independence associated with the prospects of their further employment within their national government.<sup>23</sup> This may become particularly problematic at international courts to which judges are appointed for non-renewable term of service (such as the ECtHR), especially in the later years of the younger judges' term. There is normally no such issue with older international judges who, following their international judicial service, often retire or return to an academic position. Against this backdrop, one recent contribution only briefly discusses, in the context of the judicial diversity at the ECtHR, international judges' age as one of the relevant factors influencing their world views and personalities, as well as its effects on the international judicial process and rulings.<sup>24</sup> Beyond this study, the literature on the relationship between international judges' age and their judging is rather

<sup>19</sup>M. A. Waseem, 'Citing Religious Texts in Individual Opinions to Judgments of the International Court of Justice: Do Judges Incorporate Their Religious Identity in Judicial Decision-Making?', in *ibid.*

<sup>20</sup>A. R. Schwall, 'Defining Age and Using Age-Relevant Constructs', in W. C. Borman and J. W. Hedge (eds.), *The Oxford Handbook of Work and Aging* (2012), 169.

<sup>21</sup>L. Swigart and D. Terris, 'Who are International Judges', in C. P. R. Romano, K. J. Alter and Y. Shany, *The Oxford Handbook of International Adjudication* (2014), at 625.

<sup>22</sup>*Ibid.*

<sup>23</sup>*Ibid.*

<sup>24</sup>F. Baetens and A. Nußberger, 'Diversity on the Bench of the European Court of Human Rights: A Clash of Paradigms', in Baetens, *supra* note 9.

limited, thus leaving open questions of whether, for example, older international judges are more likely than their younger colleagues to rule in favour of age discrimination claims, or whether they are more likely to issue dissents, or whether they are more predictable in their decision-making at earlier rather than later points in their international judicial careers.

### 2.5 The effects of judges' professional experiences and education

Professional roles and backgrounds of international judges is another relevant personal category whose effects on their judicial behaviour and rulings can be a particular subject of socio-legal inquiry. This category includes international judges' education, training, field of legal expertise or specialization and previous career experience involving a wide variety of professional backgrounds – ranging from former international judges, diplomats, government agents and other civil servants, representatives of international or regional organizations, academics and law professors, national career judges, private practitioners and practising lawyers, to politicians with hardly any legal knowledge or experience and even NGO employees. Most international judges have experience in more than one of these professional tracks, with some of them having careers in which their commitments have been so varied that it is impossible to neatly classify them into different professional roles.

As regards international judges' education and training, most of them hold their first degrees in law from their countries of origin. A few international judges from smaller nations, however, received their second or third degree overseas. Many international judges also have degrees outside strictly legal studies, including political science, economics, public administration and even philosophy.<sup>25</sup> Against this backdrop, it cannot be assumed that all international judges, regardless of their professional backgrounds and formation, approach the cases before them in exactly the same manner. A starting point in working on a case will arguably vary depending on an individual judge's professional background: while a former practising lawyer on the international criminal bench or international human rights bench will tend to assess the cases through the lens of the defendant/the victim, a career judge will build on her extensive national judicial experience, and a former law professor will most likely focus her attention on what she deems to be the most important or challenging legal question in a case at hand. Likewise, career judges on the international criminal bench will be more versed and experienced to efficiently run international criminal trials than, for example, ex-academics or ex-diplomats without any prior judicial experience. All this suggests that judges from different backgrounds will be preoccupied with different aspects of problem-solving, legal reasoning, and case management,<sup>26</sup> and that an international judge's professional experience and education will have an impact on the way she considers cases on her desk and runs trials.

The role that professional and educational backgrounds of international judges play in their judging has attracted a great deal of scholarly attention.<sup>27</sup> Previous research, as well as Maučec and Dothan's article in this Symposium, have shown that international judges' prior identities and expertise tend to carry over into their new roles on the international bench and are decisive factors in their judicial decision-making.<sup>28</sup> For example, Maučec and Dothan argue in their article that, according to the interviewed ICC judges, international criminal judges who are former diplomats or academics would, as a rule, dissent less than former professional judges. Focusing on dissenting judicial behaviour on the ICC bench, interviews with ICC judges moreover suggest that these judges find their colleagues' professional backgrounds more important than any other of

<sup>25</sup>*Supra* note 21, at 626.

<sup>26</sup>E. Voeten, 'International Judicial Behavior', in Romano, Alter and Shany, *supra* note 21, at 566.

<sup>27</sup>Posner and de Figueiredo, *supra* note 12, at 608; Voeten, *supra* note 12; Baetens and Nußberger, *supra* note 24, at 484–6.

<sup>28</sup>G. Maučec and S. Dothan, 'Judicial Dissent at the International Criminal Court: A Theoretical and Empirical Analysis', in this issue, doi: [10.1017/S0922156522000103](https://doi.org/10.1017/S0922156522000103).

their traits and identities, even national backgrounds.<sup>29</sup> Similar findings can be gleaned from interviews with judges in different international courts.<sup>30</sup>

### 2.6 The effects of other personal characteristics of judges

Other characteristics such as race/ethnicity, gender identity/sexual orientation or socio-economic status of international judges, too, are potentially important but thus far unexplored, either because there are few judges who identify as having those characteristics or because data on those characteristics are limited or unavailable. Yet, the specific influences of these other identity factors on international judging deserve to be scrutinized as well. For example, as of our writing, no research has examined legal decision-making and voting behaviour of LGBT judges at international criminal and human rights courts, despite the importance of sexual violence and LGBT rights-related cases reaching these courts. Similarly, research that considers the relationship between race/ethnicity and judicial decision-making at international courts, in particular empirical studies demonstrating that race/ethnicity of international judges can shape or predict the international judicial outcomes in limited kinds of cases, is still lacking. As Lee Epstein and Jack Knight note, it is much more challenging to come up with any quantitative analysis for categories such as race or ethnicity on the international benches, for there is a lack of disaggregated data on such personal characteristics of international judges.<sup>31</sup> The questions such as whether black judges on international criminal tribunals are inclined to treat black defendants more leniently or whether white judges display a less favourable attitude towards black defendants as compared to white defendants are yet to be researched.

### 2.7 The effects of judges' multiple and intersecting identities

International judges are people with differing backgrounds and identities. Each of them has a certain age, gender, ethnic and social origin, nationality, sexual orientation, religion or belief system or a lack of it, and so on. Hence, the effects of international judges' personal characteristics on their judging should also be studied from the perspective of the specific impact that two or more such characteristics – operating either separately or in interaction with each other at the same time – have on international judicial decision-making. We can note a small but growing literature that focuses on international judges who are women of colour, notably African female judges, and the obstacles they face on their paths to the international bench and throughout their international judicial career, including double discrimination on the grounds of both their gender and race.<sup>32</sup> Beyond these studies, questions such as when one identity of an international judge over others is likely to be triggered because it may be particularly salient to the case at hand, or what the combined effects are of international judges' multiple and intersecting identities on their behaviour and rulings remain largely unexplored. No study has directly addressed international judicial decision-making through the lens of intersectionality. Research focusing on intersectionality may thus explore whether, for example, non-white religious female judges on the international criminal bench are more likely to rule in favour of black criminal defendants than white male atheistic judges and similar intersectionality-driven questions.

<sup>29</sup>Ibid.

<sup>30</sup>D. Terris, C. P. R. Romano and L. Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (2007), at 64.

<sup>31</sup>Supra note 1.

<sup>32</sup>R. E. Badejogbin, 'African Women's Paths to the International Bench: How to Overcome the Hurdles', in Baetens, supra note 9; J. J. Dawuni, 'African Women Judges on International Courts: Symbolic or Substantive Gains?', (2018) 47 *University of Baltimore Law Review* 109; A. Kuenyehia and J. J. Dawuni, *African Women Judges on International Courts: Untold Stories* (2017).



### 3. This Symposium

This special issue contains four articles presented and discussed at the conference “How Personal Characteristics of International Judges Affect Their Rulings: Socio-Legal Perspectives”. The Symposium begins with an article that reviews the literature on the effects of social identity and social diversity of judges on their judging at national and international courts.<sup>33</sup> Lee Epstein and Jack Knight note that this literature can be divided into two different strands of research: one focusing on the social identity of individual judges and producing outcomes in line with in-group bias, and the other arguing that socially diverse courts where judges deliberate and rule in panels/chambers can generate judicial decisions and rulings that enjoy a higher level of quality and normative legitimacy in the eyes of stakeholders and the wider public than those rendered by collegial courts with no or very little judicial diversity. As well as surveying the relevant literature, an important added value of this contribution is that it offers some guidance and identifies possible avenues for further research on these topics.

In the next contribution, Loveday Hodson looks at a prominent issue of women’s underrepresentation on international benches by investigating why international judges’ gender matters in their judging.<sup>34</sup> Drawing on a claim that a lack of female judges in international judicial institutions results from and, at the same time, contributes to gendered operation of these courts and gendered nature of the judicial role, Hodson argues for pursuing a ‘transformative equality’ approach to addressing a disproportionately low number of female international judges. Approaching this subject from such a ‘transformative’ perspective, she contends, holds a significant capacity to effectively challenge and transform the norms and structures of power predicated on deep-seated, pervasive and subtle gender-related inequalities in international legal institutions and processes.

As a valuable sociological intervention, the next article by Salvatore Caserta and Mikael Rask Madsen examines the effects on judgments through a combination of international judges’ individual traits and their collective behaviour.<sup>35</sup> Relying on a sociologically inspired structural theory of judicial behaviour and applying a modified concept of ‘international judicial habitus’ to the CCJ context, Caserta and Madsen explain how, as a matter of fact, international judicial behaviour and practices are ‘double-structured’.

The last contribution in this Symposium analyses the law and practice of judicial dissent at the ICC, combining a theoretical and an empirical approach.<sup>36</sup> Gregor Maučec and Shai Dothan draw on qualitative data derived from interviewing ICC judges to demonstrate that – according to the judges’ own perceptions and experiences – some of their personal identities (their personalities, career experience, and areas of expertise) do matter when it comes to the questions of why and when individual international criminal judges dissent. Linking these empirical findings to the theories of judicial dissenting behaviour, Maučec and Dothan conclude that career criminal judges turned ICC judges can be considered ‘postpositivist legalists’, or ‘attitudinal’ ICC judges, as they are more inclined to issue their dissent in case of disagreement within a trial chamber than judges with other backgrounds. Conversely, former diplomats, international judges and academics who specialize in public international law can be labelled ‘strategic’ ICC judges since they expressed a disinclination to use judicial dissent. With these findings, Maučec and Dothan bring new insights also more broadly into the area of dissent and judicial decision-making in international law.

<sup>33</sup>See generally, *supra* note 1.

<sup>34</sup>See generally, L. Hodson, ‘Gender and the International Judge: Towards A Transformative Equality Approach’, in this issue, doi: [10.1017/S0922156522000462](https://doi.org/10.1017/S0922156522000462).

<sup>35</sup>See generally, S. Caserta and M. R. Madsen, ‘International Judicial Habitus as Double Structuration: A Structural Approach to Explaining International Adjudicative Practices’, in this issue, doi: [10.1017/S0922156522000486](https://doi.org/10.1017/S0922156522000486).

<sup>36</sup>See generally, *supra* note 28.