



## OSSERVATORIO SUI TRIBUNALI INTERNAZIONALI PENALI N. 2/2021

### 1. THE ELECTION OF THE THIRD ICC PROSECUTOR AND THE CHALLENGES AHEAD

#### 1. Introduction

The current Prosecutor of the International Criminal Court (ICC) - Fatou Bensouda - will terminate her office on 15 June 2021. The challenge of electing the right successor for the next nine years was felt as compelling well beyond the electing body, the ICC Assembly of States Parties (ASP). Non-states parties and the civil society at large also watched in close-up the process that drove the election of the third Prosecutor of the ICC: Karim A. A. Khan.

The attention this election captured is easily explained. The ICC Prosecutor is more than an ordinary prosecutor. The Prosecutor is the “orchestra director” of the only permanent international criminal tribunal with a potentially universal jurisdiction and the “gatekeeper” of the [Rome Statute](#) that established the ICC ([L. M. OCAMPO, \*The Challenges for the Next ICC Prosecutor, in Justice in Conflict\*, 8 April 2020](#)). The Prosecutor is «*the engine of the Court: it defines not only what populates the Court’s docket but also, and perhaps more critically, what does not*» ([C. DE VOS and M. PENA, \*Electing the Next ICC Prosecutor: A Generational Opportunity, in Justice in Conflict\*, 9 April 2020](#)). Being tasked with crucial decisions that impact the life of the Court, (s)he enjoys substantial discretion that shapes the future of the ICC and the politics of the globe.

It is not easy to find the right person at the right time when it comes to electing the ICC Prosecutor. (S)he needs to be not only a lawyer, a “courtroom litigator”, an investigator, a prosecution strategist; (s)he also needs to be a diplomat, politician, leader, and manager ([K. VIGNESWARAN and M. TAYLOR, \*The Appointment of the Next ICC Prosecutor Is Not a Forum for Career Transition, in OpinioJuris\*, 13 April 2020](#); [D. M. CRANE, \*The Chief Prosecutor: Diplomat, Politician, Leader, Manager, and Lawyer, in Justice in Conflict\*, 8 April 2020](#)). In sum, a true rock star.

It is hence hardly a surprise that the election process was a long and eventful journey punctuated with criticisms. The present contribution aims to give an account of this process and what was at stake. In so doing, it will 1) retrace the main steps of the process that led to the election of Khan; 2) provide an account of the critiques it attracted; and 3) present briefly the profile of the new Prosecutor and the challenges he has ahead.

## 2. The Election Process

The third ICC Prosecutor was supposed to be elected during the 19<sup>th</sup> session of the ASP in December 2020.

The first deliberations on the process started within the ASP Bureau in July 2018. In April 2019, the Bureau adopted the [Terms of Reference for the Election of the Prosecutor](#), on the basis of which a Committee on the Election of the Prosecutor (CEP) and a Panel of Experts (PoE) were established to ensure - as underlined by their respective Chairs Sabine Nölke and Charles Jallow - that the election was not “based on considerations other than merit” (C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process for the Third ICC Prosecutor*, in *OpinioJuris*, 24 April 2020).

The CEP’s objective was to «*facilitate the nomination and election of the next Prosecutor*» (Terms of Reference, para. 9). Its role was “similar” to that of the Search Committee created in 2011 in the context of the election of the second Prosecutor, with some “improvements” (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process*, above).

The creation of the PoE represented what has been defined as “[a significant innovation](#)” by the ASP President, O-Gon Kwon. The Panel was established with an “advisory capacity”—its aim was «*to assist the Committee in carrying out its mandate*» (Terms of Reference, paras. 7 and 10) and to ensure that «*only the most qualified professionals are presented to States Parties for (s)election*» (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process*, above). The Chairs of the CEP and the PoE have nevertheless underlined that «*the division of labor foreseen in the Terms of Reference essentially create[d] a rigorous two-level vetting system*» (*ibid.*).

The [members sitting in the two bodies](#) were designated by consensus by the ASP Bureau in June 2019. They were drawn from each of the five regional groups of the ASP. CEP’s members served «*in an individual and independent capacity*»; PoE’s members were independent experts with «*extensive national or international criminal investigation, prosecution or judicial experience*» (Terms of Reference, paras. 4 and 7). The positions were not remunerated—the service was deemed to be “pro bono” (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process*, above).

In August 2019, the [vacancy announcement](#) for the position of Prosecutor was published. It was prepared by the PoE, reviewed by the CEP, and approved by the ASP Bureau. Some of the requirements listed therein were drawn from the Rome Statute—“high moral character”; competence and experience «*in the prosecution or trial of criminal cases*»; fluency in either English or French at least; ability to “act independently” and to exercise “full authority over the management and administration of the Office» (Articles 42(1)-(3)). Some other requirements were not. The CEP’s and PoE’s Chairs underlined that the “emphasis” in the announcement on the experience, especially as a prosecutor, «*in the investigations, trials and appeals of complex criminal cases*» is explained by the effort to tackle the “challenges” faced by the OTP “in carrying out effective investigations and prosecutions”. Such “technical competencies [...] are not however presented to the exclusion of other, equally important, excellent leadership and personal qualities required for success» (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process*, above).

The CEP had to receive applications from individuals - «*[n]ominations or endorsements by States Parties or other entities are strongly discouraged at this stage*» (Terms of Reference, para.

13). The first deadline to apply was 31 October 2019; it was then extended until 25 November 2019.

It was reported that a total of 144 applications had been received. Of those, only 89 were complete (i.e. presented all the required supporting materials). The CEP's Chair, Sabine Nölke, [declared](#) that *«the pool was a bit shallower than we had hoped»*. One applicant was nominated by a State Party and, after being encouraged to do so, the candidate applied directly (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties' Selection Process*, above). According to the [addendum to the CEP's interim report](#), only 30,8% of the applications were coming from women. Regarding the regional group of origin, 58 were coming from Western Europe and other groups, 48 from the African Group, 14 from the Latin American and Caribbean Group, 13 from the Asia-Pacific Group and 11 from the Eastern European Group. Thirty of these were coming from non-states parties.

In December 2019, the PoE met to review the applications (“paper-sifting task”) focusing on the experience and competencies of candidates; attention was given also to *«gender and geographical balance and adequate representation of the principal legal systems of the world»* (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties' Selection Process*, above). The PoE submitted a confidential report to the CEP recommending a longlist of candidates (Terms of Reference, para. 15).

In February 2020, the Committee met to review the applications, taking into account the PoE's recommendations. It then decided on a confidential list of 16 candidates to be interviewed—but one withdrew afterwards. The CEP's and PoE's Chairs wrote that the number of shortlisted candidates was “justified by the candidate pool”; it was almost double the number of persons (8) interviewed during the previous Prosecution elections (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties' Selection Process*, above). The confidentiality of individual applications was protected at this stage (Terms of Reference, paras. 23–24), although transparency was to be ensured (para. 22).

Between May and June of the same year, the interviews were conducted by the CEP and the PoE via remote-link because of the COVID-19 pandemic. After that, the Committee, advised by the PoE, assessed the candidates (*ibid.*, para. 15). The CEP submitted its report to the ASP Bureau with a short-list of four candidates for the ASP's consideration. Confidentiality on the short-listed candidates was then lifted (*ibid.*, paras. 23 and 24). These four candidates participated in public hearings in July 2020. This part of the process, similar to that already experimented for the previous election, constituted *«an additional round of vetting and screening of the candidates, by States and civil society»* (see C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties' Selection Process*, above).

In August 2020, the ASP President wrote to States Parties to outline the modalities for the consultation process to determine whether a candidate attracted the States Parties' consensus. After more than three months of discussions, in November 2020 the ASP Bureau enlarged the short-list. It was provided that, *«[i]n addition to the four candidates selected [...], the remaining individuals who were originally interviewed by the CEP that are still willing to be considered shall be included on the expanded lists»* ([Election of the Prosecutor: Way Forward](#), para. 1).

This decision was considered necessary since the short-list was welcomed with consternation and critiques. In particular, the election of three of the four candidates would have violated either the custom of regional rotation - Anyah and Okalany were both African as Bensouda - or Article 42(2) of the ICC Statute, which prohibits against the Prosecutor and the Deputy Prosecutor having the same nationality—Roy was Canadian as

the current Deputy Prosecutor, James Stewart. That would have left only Gaynor “as the only electable candidate” ([G. M. EKELOVE-SLYDAL, \*The Process of Electing the Next ICC Prosecutor Should be Opened Up\*, in \*OpinioJuris\*, 10 August 2020](#)).

Some scholars underlined that States Parties had no obligation to accept the candidates shortlisted by the CEP. Their rejection is thus “not a *deviation* from the process” but “*part of the process*” ([K. J. HELLER, \*Four Thoughts on the Election for ICC Prosecutor \(Updated\)\*, in \*OpinioJuris\*, 17 November 2020](#); see also [K. J. HELLER, \*Why States Are Free to Nominate New Candidates for Prosecutor\*, in \*OpinioJuris\*, 19 July 2020](#)). However, it led to delays in the election.

As requested by the Bureau, the CEP submitted an [addendum](#) to its report containing the appraisal of the additional candidates. Public hearings with the expanded list of candidates (9) took place in December 2020. It is here that the role of the CEP and the PoE came to an end.

The ASP Bureau adopted modalities for the consultation process to identify a consensus candidate the same month. Four rounds of informal consultations followed between 11 December 2020 and 3 February 2021, with the support of the five focal points appointed pursuant to the “Election of the Prosecutor: Way Forward”. At the ASP19, the Assembly agreed to defer the election of the ICC Prosecutor to a second resumed session to be convened in early 2021. Consultations continued among States Parties with a view toward building consensus.

On 8 February 2021, the ASP19 resumed at the UN Headquarters in New York. There, the ASP President informed States Parties that, despite the best efforts, it had not been possible to achieve consensus. Hence, the Prosecutor would have been elected by secret ballot by an absolute majority by the ASP, as provided by the Rome Statute (Article 42(4)).

The nomination period was then extended until 10 February 2021. After that, the Secretariat received formal nominations of four candidates: Carlos Castresana Fernández (Spain), Fergal Gaynor (Ireland), Karim A. A. Khan (United Kingdom) and Francesco Lo Voi (Italy) - all men from Western Europe. Of these, only Gaynor was included in the first short-list.

On 12 February 2021, the ASP finally elected on the second ballot with 72 votes Khan as the next ICC Prosecutor.

### *3. Critical voices from civil society*

The Chairs of the CEP and PoE considered the election process “innovative”, “structured”, “transparent” and “inclusive” - a testimony to States’ commitment to recruit “the most highly qualified candidate’ for the post of chief prosecutor, based on objective criteria.” (C. JALLOH and S. NÖLKE, *The ICC Assembly of States Parties’ Selection Process*). However, the ICC Prosecutor election process attracted numerous criticisms in different respects.

The most vocal one is the lack of a proper and professional vetting process that could check on whether the candidates possessed the “high moral character” requested by the Rome Statute. This is particularly reprehensible as the [Final Report of the Independent Expert Review](#) reported having heard «*many accounts of bullying behaviour amounting to harassment in all Organs of the Court, though particularly in the OTP*» and «*a number of accounts of*

sexual harassment”. The Report also highlighted «*the inadequacy of the existing mechanisms in the Court to deal with complaints of bullying and harassments*» (paras. 209-210).

As it has been underlined, “a person with a razor-sharp moral compass” should be elected so that (s)he «*can follow-through on and coordinate the multiple overlapping initiatives underway to tackle misconduct*» (D. CHAIKEL, [The Next ICC Prosecutor Must Embody Integrity in the #MeToo Era, in \*OpinioJuris\*, 16 April 2020](#)). Serious allegations have however emerged during the election process against some of the candidates. On 17 November 2020, Danya Chaikel (Women’s Initiatives for Gender Justice) tweeted that she had «*received complaints of misconduct regarding three (potential) candidates*» (the tweet is reported, *inter alia*, by S. MAUPAS, [Exclusive: List of Candidates for Next ICC Prosecutor, in \*Justiceinfo.net\*, 20 November 2020](#); see also D. CHAIKEL, [The Next ICC Prosecutor Must Embody Integrity](#), above).

The Chairs of the CEP and PoE wrote that a vetting process was supposed to nevertheless take place during the interviews and that engagement with civil society and States Parties would have presented «*further opportunities to ensure that the candidate ultimately selected for the position possesses the qualities mandated in the Rome Statute*» (see C. JALLOH and S. NÖLKE, [The ICC Assembly of States Parties’ Selection Process](#), above). Moreover, the CEP has expressed its availability to receive credible information about individuals who may have applied for the position and stated that it will consider them in their evaluation (T. REISMAN, [Electing the Next ICC prosecutor: Committee Pledges Openness to Receiving and Considering Information Relating to Potential Candidates, in \*ijimonitor.org\*, 28 February 2020](#)).

However, it was lamented that, although information about the candidates circulated, there was no process in place to receive and assess complaints of misconduct against candidates (HUMAN RIGHTS WATCH, [International Criminal Court Prosecutor Elected: Karim Khan Should “Rise to the Challenge”, 12 February 2021](#); ATLAS, [Open letter to the CEP and ICC States Parties, 30 April 2020](#)). No procedure «*providing protection from retaliation, or a potential defamation lawsuits*» against the complainants was provided either (see, *inter alia*, D. CHAIKEL, [The Next ICC Prosecutor Must Embody Integrity](#), above).

Twenty-six civil society organisations sent an [open letter](#) to the CEP urging it to, most notably, 1) adopt a definition of “high moral character” that provides «*zero tolerance for any history of sexual harassments*»; 2) develop «*a process for considering credible, external information that sheds light on candidates’ histories in this respect*»; 3) «*after affording candidates an opportunity to respond, potentially excluding [them]*».

Several organisations also underlined the need to establish a permanent vetting process not only for the Prosecutor election but also for other future ICC elections, including judicial ones (see, e.g., HUMAN RIGHTS WATCH, [International Criminal Court Prosecutor Elected](#), above; A. MUDUKUTI, [Continued Concerns About the ICC Prosecutor Election: No Election Without Vetting, in \*ijimonitor.org\*, 3 February 2021](#); ATLAS, [Open letter](#), above). A proper vetting process should involve «*background checks, non-candidate-chosen reference letters, and [...] a robust process for considering allegations of sexual harassment and other forms of workplace harassment*» (see K. J. HELLER, [Four Thoughts on the Election for ICC Prosecutor](#), above).

Vetting has been deemed fundamental for the “Court’s reputation” and “the well-being of its staff” (see A. MUDUKUTI, [Continued Concerns](#), above). Others have argued that, in this way, alleged victims, candidates (who were not given a possibility to reply to accusations) and the ICC’s staff have been all neglected (OPEN SOCIETY JUSTICE INITIATIVE, [ASP Presidency Fails to Protect the Integrity of the Election of the Next ICC Prosecutor, in \*justiceinitiative.org\*, 10 February 2021](#)).

A second recurrent criticism revolves around what competencies the next Prosecutor was asked to possess. It was underlined that the vacancy announcement put too much emphasis on technical competencies, to the detriment of other hard or soft skills. However, there is no consensus on which skills the vacancy should have focused; different opinions were expressed on the issue.

According to some, «*clear and effective communication, strategic judgment and discretion, the ability to nourish relationships with diverse constituencies, and a commitment to fairness*» proved to be the most important in the ICC early experience ([J. A. GOLDSTON, \*Choosing the Next ICC Prosecutor: Lessons from the Past, in Justice in Conflict\*, 12 April 2020](#)).

Others argued that priority should have been given to «*candidates who are good at directing, recruiting top advisors, and managing a complex Office, over candidates who have proved themselves in the courtroom*» (see G. M. EKELOVE-SLYDAL, *The Process of Electing the Next ICC Prosecutor Should be Opened Up*, above).

As the ICC Prosecutor has even the previously unknown burden of selecting situations, William Schabas underlined that the main requirements should have been not only an extensive knowledge of the “international political and legal context”, but also “[g]reat courage”. The most brilliant prosecutors in international criminal justice would have not probably made it to the short-list in this election as the «*elements that made them such stellar candidates [...] seem to be undervalued, even ignored, in the process of selection of the next Prosecutor*». ([W. A. SCHABAS, \*The Search for the New Prosecutor is Too Narrow in Scope, in OpinioJuris\*, 12 April 2020](#)). This is probably due to the fact that «*[t]he Prosecutor walks a tightrope between playing politics and pretending that they don't exist within the confines of the Office that they run. [But] [...] to be better at politics, you have to acknowledge that what you're doing is politics*». ([M. Kersten, \*The Politics of a Prosecutor: Getting the Context Rights, in Justice in Conflict\*, 15 April 2020](#)).

Ultimately, it has been suggested that the Prosecutor should «*possesses a quantum of each desired attribute [‘an inspiring world leader, a deft diplomat, a brilliant boss, and an incisive legal strategist’] and [the hope is that (s)he] will manage, most of the time, to deploy the attribute that is most needed at the time*». ([D. M. AMANN, \*Placing the Prosecutor within the International Criminal Justice Project, in OpinioJuris\*, 17 April 2020](#)).

Probably, the ideal ICC Prosecutor is not even real.

#### 4. Karim A. A. Khan: his profile and the challenges he has ahead

But who is Karim Khan, the next ICC Prosecutor?

Khan is a UK national from a religious minority. He is currently Assistant Secretary-General of the United Nations and Special Adviser and Head of the Investigative Team to Promote Accountability for Da'esh/ISIL crimes (UNITAD). He is a Barrister-at-Law and Bencher at Lincoln's Inn, qualified to practice law in the United Kingdom (UK). He acted as a prosecutor in domestic cases. At the international level, he was legal advisor in the international criminal tribunals for former Yugoslavia and Rwanda and he has also extensive experience as defence and victims' counsel before international and hybrid criminal tribunals.

In its [report on the appraisal of additional candidates](#), the CEP defined him as «*a charismatic and articulate communicator*». He is considered to demonstrate «*a good command of international criminal law practice and of the global context in which the ICC operated, as well as a clear vision of necessary changes in the OTP*». He has «*gained experience in managing a large team*». He

demonstrated «a clear commitment to a harassment-free workplace, drawing on concrete experiences». However, « [g]iven his previous engagements as defense counsel in a number of on-going cases before the ICC, the probability of the need for multiple recusals is considerable» (*ibid.*, paras. 17-18). Bensouda was recently [informed](#) by Khan that «he will recuse himself from any case, where a conflict of interest may be perceived to arise from his former representation of suspects or accused persons».

On the one hand, Khan's candidacy was supported by many civil society organisations (see, e.g., a [letter of endorsement](#) sent by six important African NGOs). On the other, it was also criticised (see the [letter](#) in which Kenyan NGOs blame him for having «silenc[ed] Kenyan voices that wanted accountability» when he acted as a defence counsel in the Kenyan case in front of the ICC). Now that he has been elected, however, everyone puts high expectations on him. This election indeed comes at a crucial moment - «at a time when the ICC is needed more than ever but has faced significant challenges and pressure on its role» (see HUMAN RIGHTS WATCH, *International Criminal Court Prosecutor Elected*, above). The challenges he has ahead of him are numerous and hard to tackle.

Starting from those challenges of an “internal” nature, the [final report of the Independent Expert Review of the International Criminal Court and the Rome Statute System](#) underlined a plethora of different areas on which the OTP should work. The new Prosecutor will be the one in charge of addressing the majority of such critics and implement the changes he wishes to.

Among these “internal challenges”, there is the high number of ongoing preliminary examinations and investigations (some of them having been stalled for years), as opposed to budget restraints (on this, see, e.g., [J. O' DONOHUE, \*Wanted—International Prosecutor to Deliver Justice Successfully Across Multiple Complex Situations with Inadequate Resources, in OpinioJuris\*, 14 April 2020](#) and [P. I. LABUDA, \*Less is More: Rediscovering the Prosecutor's Core Mandate, in Justice in Conflict\*, 14 April 2020](#)). The one that catches the eye the most is, however, the small number of cases brought to trial. As underlined by the scholarship, after all, “[e]mpty courtrooms, and the ICC fails” ([A. WHITING, \*What to Look for in the Next ICC Prosecutor, in Justice in Conflict\*, 17 April 2020](#)). Notwithstanding such a small pool of cases, moreover, the number of acquittals is substantial: four, as opposed to nine convictions. These figures have been considered emblematic of poor investigations and prosecutions (on this, see [E. BROWN AND W. H. WILEY, \*What Can and Should the Next Chief Prosecutor Do to Improve the ICC's Investigation Techniques?, in Justice in Conflict\*, 13 April 2020](#)). On another level, also the above-mentioned “culture of fear” and “distrust” that characterises the working environment within the Court and the OTP in particular is a defiance that the OTP cannot avoid anymore (see Independent Expert Review, above, para. 138).

The new Prosecutor will need to tackle these serious “internal challenges” having even more pressing “external challenges” at the Court's doors. As recently underlined by the first ICC Prosecutor - Luis Moreno Ocampo - the next Prosecutor will work in an environment where what is “up for debate” is the ICC's “relevance” (see L. M. OCAMPO, *The Challenges for the Next ICC Prosecutor*, above). It has rightly been suggested, however, that this “backlash” should probably be viewed “as the new normal” (see K. VIGNESWARAN and M. TAYLOR, *The Appointment of the Next ICC Prosecutor*, above). Moreover, the Court is facing issues of credibility (is the Court able to get done what it is supposed to get done?) and legitimacy (has the Court the moral authority to carry out its tasks?) ([T. DANNENBAUM, \*Against Modesty at the ICC, in OpinioJuris\*, 11 April 2020](#)).

The decision of Fatou Bensouda to pursue investigations in controversial situations like Myanmar, Afghanistan and Palestine—where government officials of non-states

parties are implicated - has poked many bears. Most notably, the United States. The Prosecutor's election indeed comes in a period of pressure by the US on the Court. The Trump administration imposed economic sanctions and visa restrictions on Bensouda and Phakiso Mochochoko - the Head of the Jurisdiction, Complementarity and Cooperation Division—as well as visa restrictions on other ICC personnel to discourage scrutiny on US soldiers. Such sanctions have been lifted by the Biden administration only in April this year. However, in so doing, the administration underlined that it continues «*to disagree strongly with the ICC's actions relating to the Afghanistan and Palestinian situations*» and that it objects «*to the Court's efforts to assert jurisdiction over personnel of non-States Parties such as the United States and Israel*».

As the hostility shown by states that are not a party to the Rome Statute was not enough, the UK Prime Minister Boris Johnson has recently showed its resistance, too. He made clear in a letter to the Conservative Friends of Israel (a British pro-Israel parliamentary group affiliated with the Conservative Party) its opposition to any ICC investigation into war crimes in Palestine “given that Israel is not a party to the Statute of Rome and Palestine is not a sovereign state”. He added that the election of two UK nationals (Khan as Prosecutor and Joanna Korner as judge) “will help serve reform” - as if the cardinal quality of these two positions was not independency.

Moreover, it seems that some States Parties are not only increasingly concerned that the Court is navigating troubled waters in certain situations; they have also «*grown impatient with the Court's limited successes and its institutional inefficiencies*» (see C. DE VOS and M. PENA, *Electing the Next ICC Prosecutor*, above). The distribution of open situations around the globe still raises controversies as the Court has not yet issued an arrest warrant or a summons to appear to “a non-African” (see T. DANNENBAUM, *Against Modesty*, above). This risks undermining financial and political support for the Court.

To tackle hostility is not sufficient; cooperation also needs to be encouraged, especially to enforce arrest warrants, that are often ignored. In general, there is a need to increase support for the Court and the international criminal justice project in general, strengthening the “community” created by the Rome Statute (see L. M. OCAMPO, *The Challenges for the Next ICC Prosecutor*, above). It has been argued this complicated scenery requires the ICC Prosecutor «*to remain true to the ambitions and visions of the court that drove its founding*» (E. EVENSON, *The Next ICC Prosecutor Should Resolutely Hold the Most Powerful to Account*, in *OpinioJuris*, 9 April 2020).

## 5. Conclusions

The process that led to the election of the next Prosecutor is definitely flawed on different respects. Most notably, the lack of a proper and professional vetting process that could assess the candidates' “high moral character” is not only regrettable, but should not be tolerated anymore in future elections, including judicial ones.

However, this does not entail that the Prosecutor elected is not the right person at the right time. Only time will tell. What we can hope is that Khan will not be afraid to take up the challenges that await for him. In fact, «*[I]his is not a job for the faint-hearted*»—it is rather “a task for a visionary” (see W. A. SCHABAS, *The Search for the New Prosecutor*, above).

Although good leadership can definitely make the difference, this may not be enough. As it has been highlighted, responsibility for making the difference in the project of international criminal justice lies in the entire Court, in the ASP, in non-states parties, in



NGOs, in the academia, in the media, with all persons making up such institutions (see D. M. AMANN, *Placing the Prosecutor*, above) and - I add - in civil society as well. International criminal justice is a complex constellation of different actors and interests, and all of them play a role in the advancing (or non-advancing) of the project. Whether this project will succeed or not, it is on all of us.

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