

TRADITIONAL GENDER- NEUTRAL AND INTERSECTIONALITY APPROACH OF PUBLIC INTERNATIONAL LAW: ITS ORGANIZATIONAL AND NORMATIVE STRUCTURE

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GEOGRAPHICAL, RACIAL AND **GENDER** OBSTACLES TO UNIVERSALITY OF PIL?

1. "equitable geographic representation"
2. "appropriate representation of different legal systems"
3. gender equality/parity/balance?



**International
law is
universal.**



**International
Law is Western,
white and male.**

ISSUES TO DISCUSS



Gender-neutral origins of PIL



Normative structure – do PIL norms include gender and intersectionality aspects and to what extent?



Organizational structure – male-dominated institutions?

GENDER-NEUTRAL ORIGINS OF PIL

- PIL developed from gender-neutral to a branch of law that considers gender and intersectionality
- Gradual and slow-paced development
- Uneven presence of gender and intersectionality aspects within particular branches of PIL
- Reasons?

ORIGINS OF PIL: ANY PLACE FOR WOMEN AND THEIR PERSPECTIVES?

Legal theory

Hugo Grotius
Thomas Hobbes
Samuel Pufendorf

Principles and institutes

War/Peace
State
Territory
Sovereignty
Diplomatic relations
Law of the Sea
International treaties

International practice

Landmark events

PIL as a regulator of
international relations



STEPS TOWARDS INCLUDING WOMEN PERSPECTIVES IN PIL

International
Council of
Women
1888

League of
Nations
1919

United
Nations
1945



LEAGUE OF NATIONS

- Women's organizations participated at the **12th meeting of the League of Nations Committee at the Peace Conference in Paris**
- their participation was limited to matters which the Committee thought were directly relevant for women
 - women's employment rights
 - prostitution,
 - prison reform,
 - child marriage
 - trafficking of women and children.
- **"The Women's Charter"** was presented
 - importance of separating the nationality of women from their spouses,
 - prohibiting human trafficking of women and girls
 - achieving equality of men and women in the area of labour



UNITED NATIONS

- Eight female delegates attended the San Francisco conference to create the United Nations Charter (out of 800 delegates).
- Only one country sent two female delegates – Great Britain (Ellen Wilkinson and Florence Gertrude Horsbrugh).
- Truman appointed Eleanor Roosevelt as a member of the US delegation at the end of 1945.
- In 1946 she became Chair of the UN Commission on Human Rights.



NORMATIVE STRUCTURE – DO PIL NORMS INCLUDE GENDER AND INTERSECTIONALITY ASPECTS AND TO WHAT EXTENT?



NORMATIVE STRUCTURE – CORE PIL INSTRUMENTS

- **The Covenant of the League of Nations**

- Art. 7: “All positions under or in connection with the League, including the Secretariat, shall be open equally to men and women.”



- **The Charter of the UN**

- the Preamble reaffirmed the faith in equal rights of men and women
- Art. 8: “The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs.”
- Art. 55: the UN further committed itself to promote universal respect for human rights without distinction as to sex.



NORMATIVE STRUCTURE – CORE IHRL INSTRUMENTS

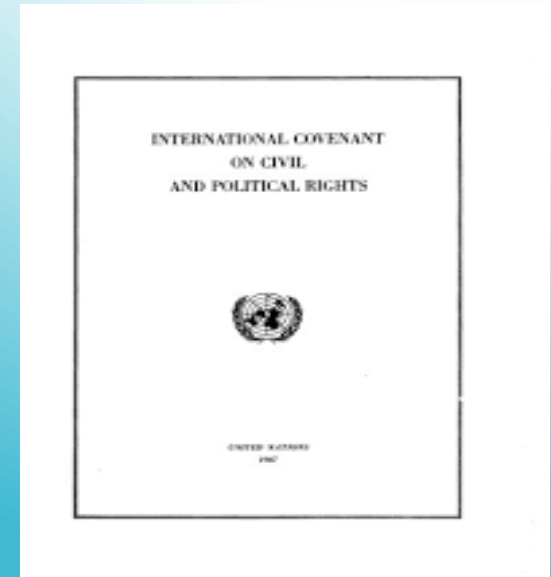
- **1948 Universal Declaration on Human Rights**

- Art. 1: initial text “All men are born free and equal” changed to “All human beings are born free and equal.”
- Art. 2: everyone is entitled to all rights without distinction, among others, of sex.
- Art. 16: proclaims equality of spouses.
- Art. 25(2): protects motherhood.



- **1966 International Covenant on Civil and Political Rights**

- Article 2(1): States Parties will respect and guarantee everyone within their jurisdiction all rights without distinction of any kind, including, sex.
- Article 3: equal right of men and women to the enjoyment of all civil and political rights



- **1966 International Covenant on Economic, Social and Cultural Rights**

- Article 2(2): same provision
- Article 3: same provision

NORMATIVE STRUCTURE – INTERNATIONAL INSTRUMENTS THAT FOCUS ON WOMEN'S RIGHTS

- **1967 Declaration on the Elimination of Discrimination against Women**
 - Preamble: women are greatly contributing to social, political, economic and family life and that full and complete development of a country, the welfare and peace in the world required their maximum participation
- **1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)**
 - prohibits gender discrimination in all areas of life.
 - lists women's human rights to equality and non-discrimination.
 - identifies actions that States must take to achieve this equality.
 - Art. 7: women's equality must be implemented in public and political life, enabling their participation in non-governmental organizations and associations and securing a more active role in international organizations and State delegations.

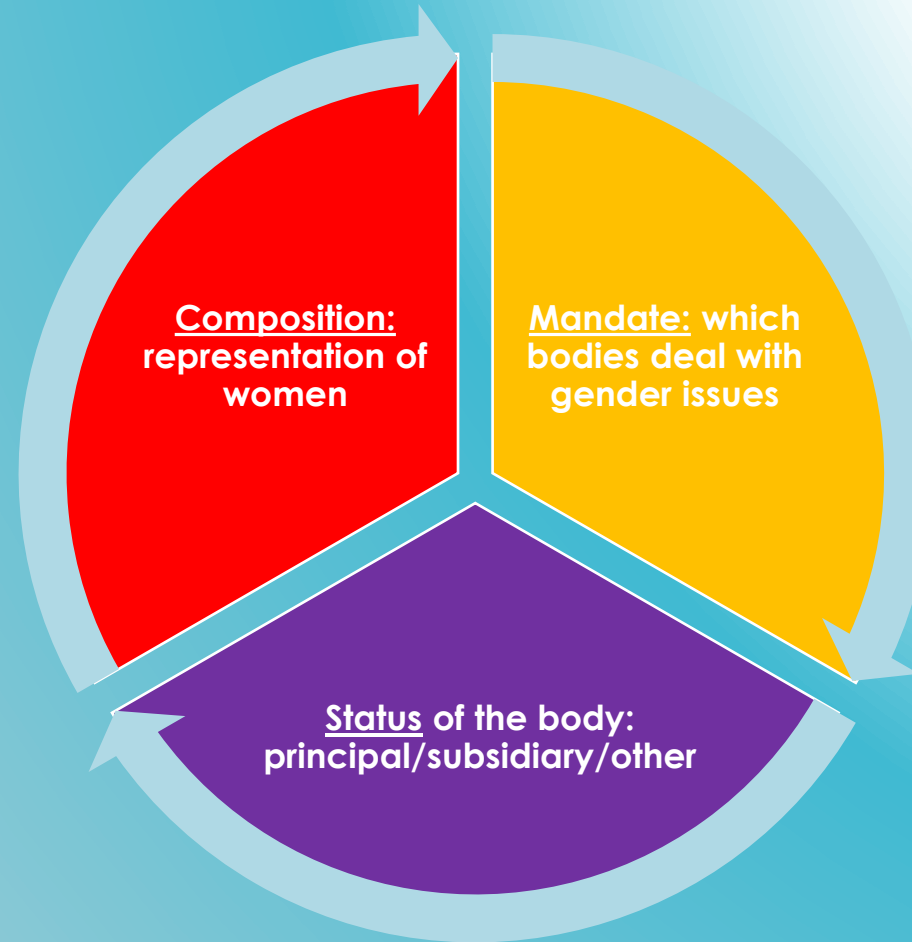


WOMEN, PEACE AND SECURITY: SECURITY COUNCIL RESOLUTION 1325 (2000)

- reaffirms the important role of women in:
 - prevention and resolution of conflicts,
 - peace negotiations,
 - peace-building,
 - peacekeeping,
 - humanitarian response and
 - post-conflict reconstruction
- urges all actors to increase the participation of women and incorporate gender perspectives in all United Nations peace and security efforts
- calls on all parties to conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, in situations of armed conflict



ORGANIZATIONAL STRUCTURE – THE ROLE OF UN BODIES IN ACHIEVING GENDER EQUALITY



UN SECURITY COUNCIL

PERMANENT MEMBERS

- China
- France
- Russian Federation
- United Kingdom
- United States

NON-PERMANENT MEMBERS

- Algeria
- Ecuador
- Guyana
- Japan
- Malta
- Mozambique
- Republic of Korea
- Sierra Leone
- Slovenia
- Switzerland



UN SECRETARY GENERAL

1. Trygve Lie, from Norway, 1946-1952
2. Dag Hammarskjöld, from Sweden, 1953-1961
3. U Thant, from Burma (now Myanmar), 1961-1971
4. Kurt Waldheim, from Austria, 1972-1981
5. Javier Perez de Cuellar, from Peru, 1982-1991
6. Boutros Boutros-Ghali, from Egypt, 1992-1996
7. Kofi A. Annan, from Ghana, 1997-2006
8. Ban Ki-moon, from Republic of Korea, 2007-2016
9. António Guterres, from Portugal, 2017-present
10. ????????????



UN GEN. SEC.

Candidates (2016)



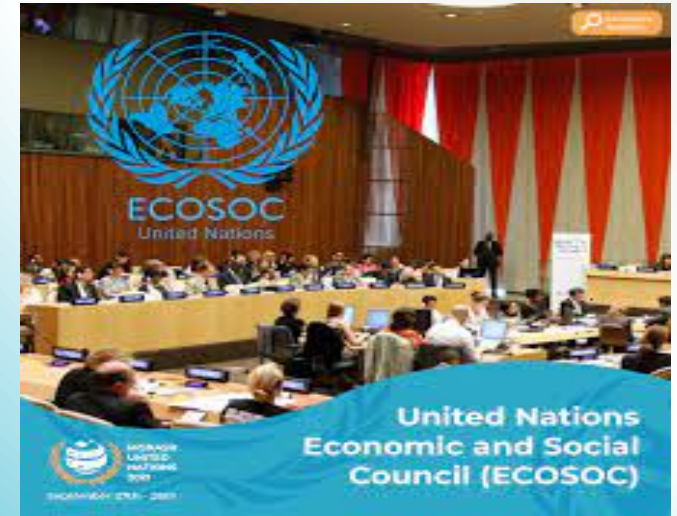
UN GEN. SEC. – ELECTIONS 2016



- 13 candidates - 7 women
- some more experienced than Mr Guterres?
- the outgoing UN Secretary General, Ban Ki-moon: it was "high time" for a female head, after more than 70 years of the UN and eight male leaders
- a "disaster for gender equality"?
- Some of the candidates said gender was a factor:
 - **Susana Malcorra**, Argentina's foreign minister: women did not have a chance in the Security Council - gender remains an issue in the election of a secretary general.
 - **Helen Clark**, New Zealand's former prime minister: *"If you're asking whether women are being discriminated against - no. There are a lot of factors swirling around. There is east-west, there is north-south, there's the style of what's wanted in the job. Do they want strong leadership? Do they want malleable? It's all cross-cutting and we don't know what will come in the wash."*

MAIN UN BODY WHOSE MANDATE IS TO DEAL WITH WOMEN'S RIGHTS

- **Economic and Social Council (ECOSOC)**
 - main body of the UN
 - mandate to promote social and economic progress, health issues, human rights without discrimination based on race, sex, language, or religion.
 - President: **Her Excellency Paula Narváez (Chile)**



SUBSIDIARY UN BODIES WHOSE MANDATE IS TO DEAL WITH WOMEN'S RIGHTS

- **UN Commission on the Status of Women**

- subsidiary body of ECOSOC (consisted of 45 member States)
- established in **1946** as the principal global intergovernmental body with the aim to promote **gender equality**.
- it discusses the **1995 Beijing Declaration** and Platform for Action as the most comprehensive global policy agenda for the empowerment of women.



SUBSIDIARY UN BODIES WHOSE MANDATE IS TO DEAL WITH WOMEN'S RIGHTS

- **UN Commission on Human Rights → Human Rights Council** (47 member States)
 - different mechanisms available to focus on the protection of women around the globe:
 - the **complaint procedure**: alleging widespread and systemic human rights violations in a certain country (ex: Eritrea, where it examined different human rights violations, including violence against women)
 - **special sessions**: to address violations of women's rights (ex: rape and sexual violence were at the attention of the special session on situation in Darfur, gender inequality and sexual violence in relation to the Democratic Republic of Congo).
 - **special procedures**: to examine particular thematic issues or the human rights situation in a certain country (ex. **Special Rapporteur on violence against women, Working Group on discrimination against women and girls**)
 - universal periodic review



OTHER UN ENTITIES THAT FOCUS ON WOMEN'S RIGHTS

- **UN Women**

- Created in 2010 by the General Assembly
- Full title: the United Nations Entity for Gender Equality and the Empowerment of Women
- supports Member States in designing laws, policies, programmes and services which are necessary to ensure that women participate equally in all aspects of life.
- It serves as a secretariat to the UN Commission on the Status of Women

Ms. Sima Bahous

Executive Director of UN Women and Under-Secretary-General of the United Nations



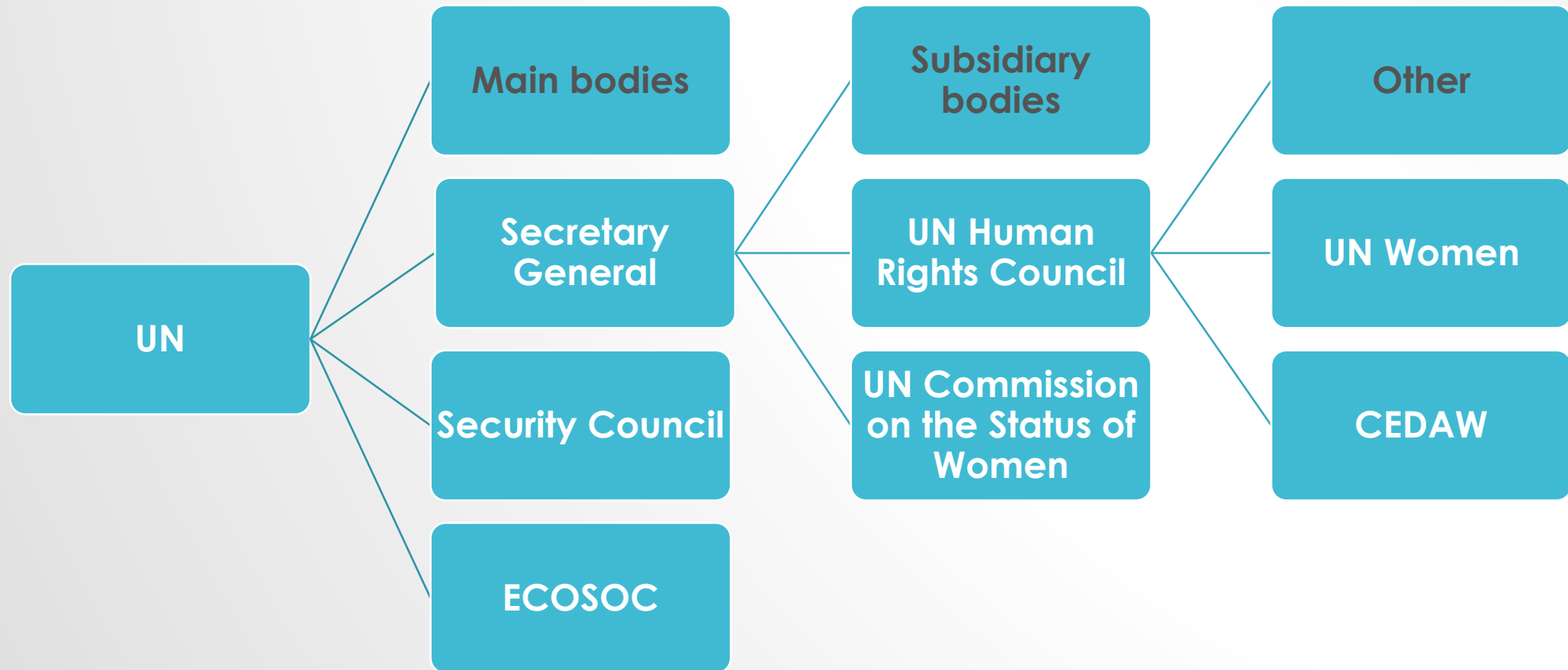


CHAIRPERSON AEZ NARVAEZ

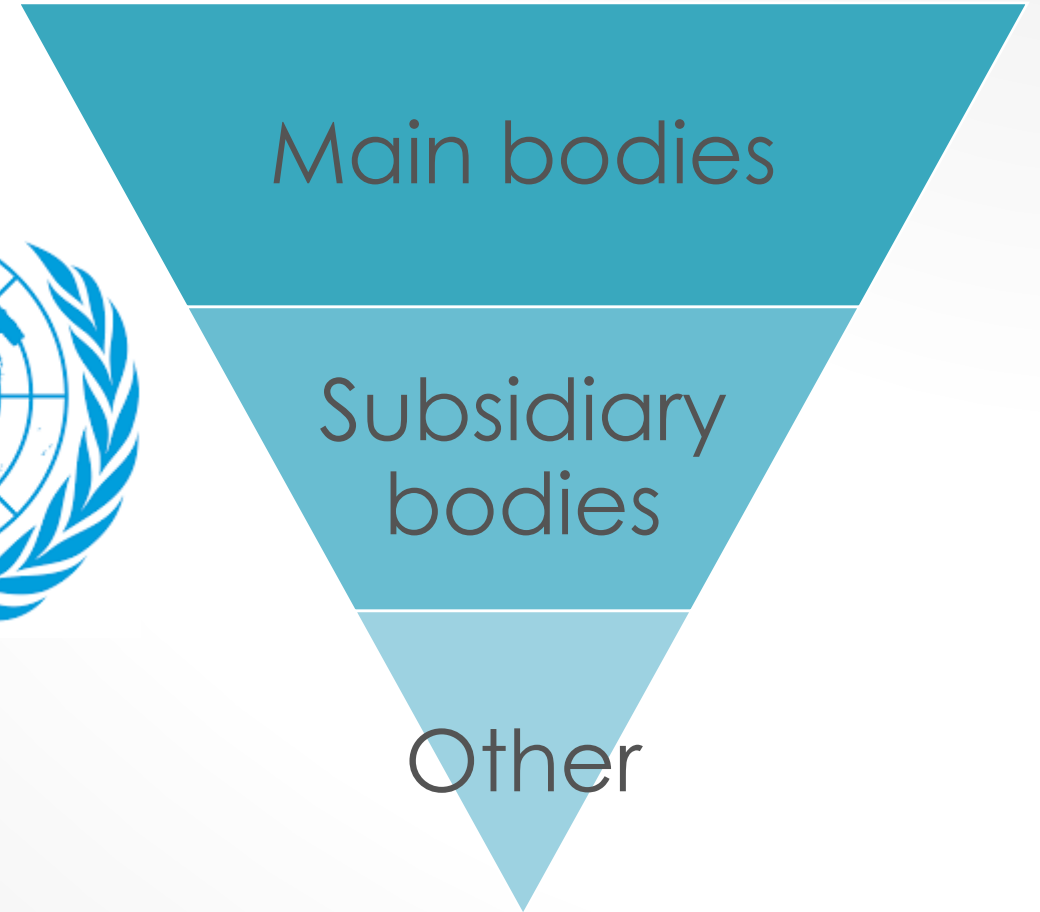
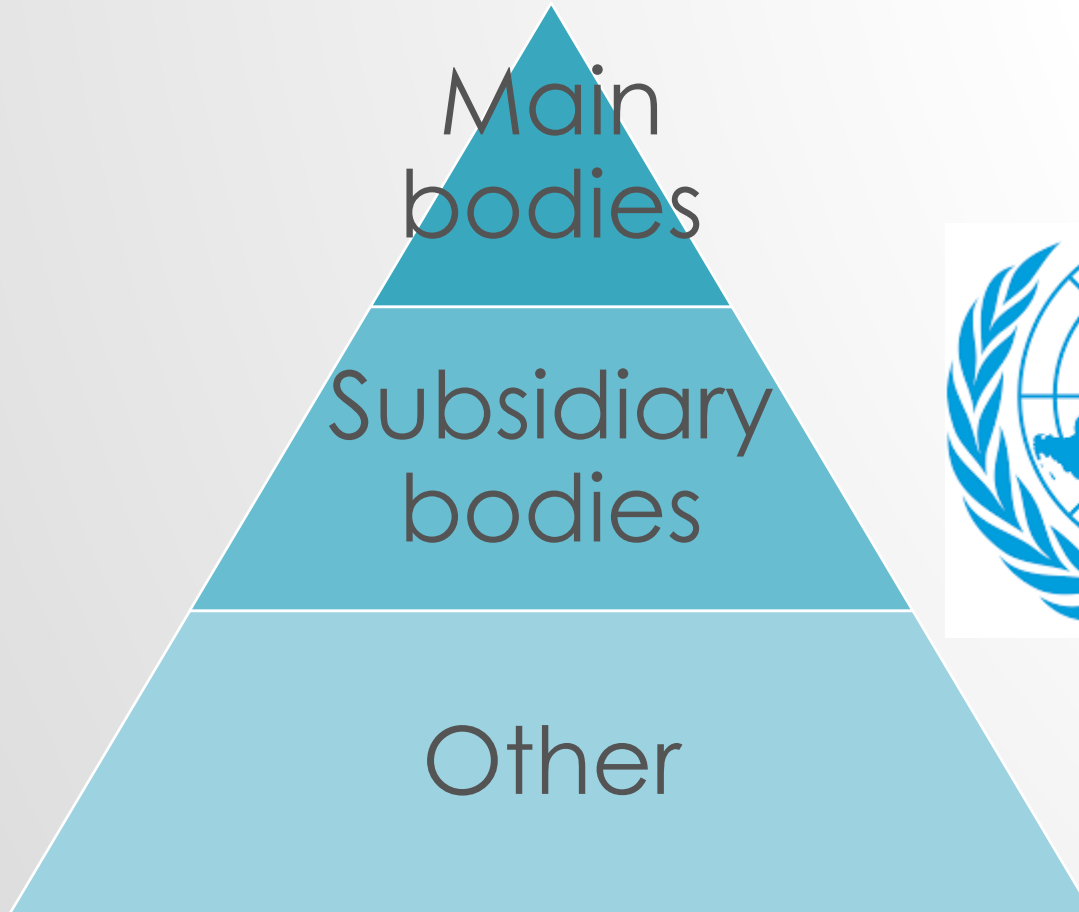
SECRETARY CEDAW

SECRETARIAT

UN INSTITUTIONAL STRUCTURE AND GENDER PARITY



GENDER PARITY/MANDATE V. POWER



WOMEN IN THE INTERNATIONAL JUDICIARY

- **International Court of Justice**
 - Rules for appointing judges
 - Women as permanent judges
 - Women as *ad hoc* judges
 - Women as presidents of the Court



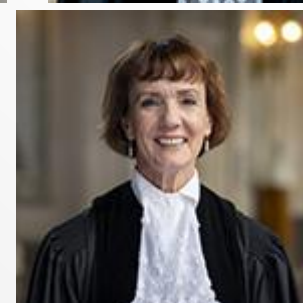
THE WORLD COURT AND WOMEN JUDGES

- 109 male judges v. 6 female judges in the history of the ICJ
- **2** female **presidents** of the ICJ
- Dame Rosalyn Higgins
 - 1995 - the first woman to be elected a judge of the ICJ
 - 2006 - the first female President of the Court
- **Ad hoc judges:** 7 female judges v. 118 male judges



ICJ

- [Nawaf Salam](#) **(Lebanon)** - President
- [Julia Sebutinde](#) **(Uganda)** – Vice-President
- [Peter Tomka](#) **(Slovakia)**
- [Ronny Abraham](#) **(France)**
- [Abdulqawi Ahmed Yusuf](#) **(Somalia)**
- [Xue Hanqin](#) – **(China)**
- [Dalveer Bhandari](#) **(India)**
- [Yuji Iwasawa](#) **(Japan)**
- [Georg Nolte](#) **(Germany)**
- [Hilary Charlesworth](#) **(Australia)**
- [Leonardo Nemer Caldeira Brant](#) **(Brazil)**
- [Judge Juan Manuel GÓMEZ ROBLEDÓ](#) **(Mexico)**
- [Judge Sarah H. CLEVELAND](#) **(United States of America)**
- [Judge Bogdan-Lucian AURESCU](#) **(Romania)**
- [Judge Dire TLADI](#) **(South Africa)**



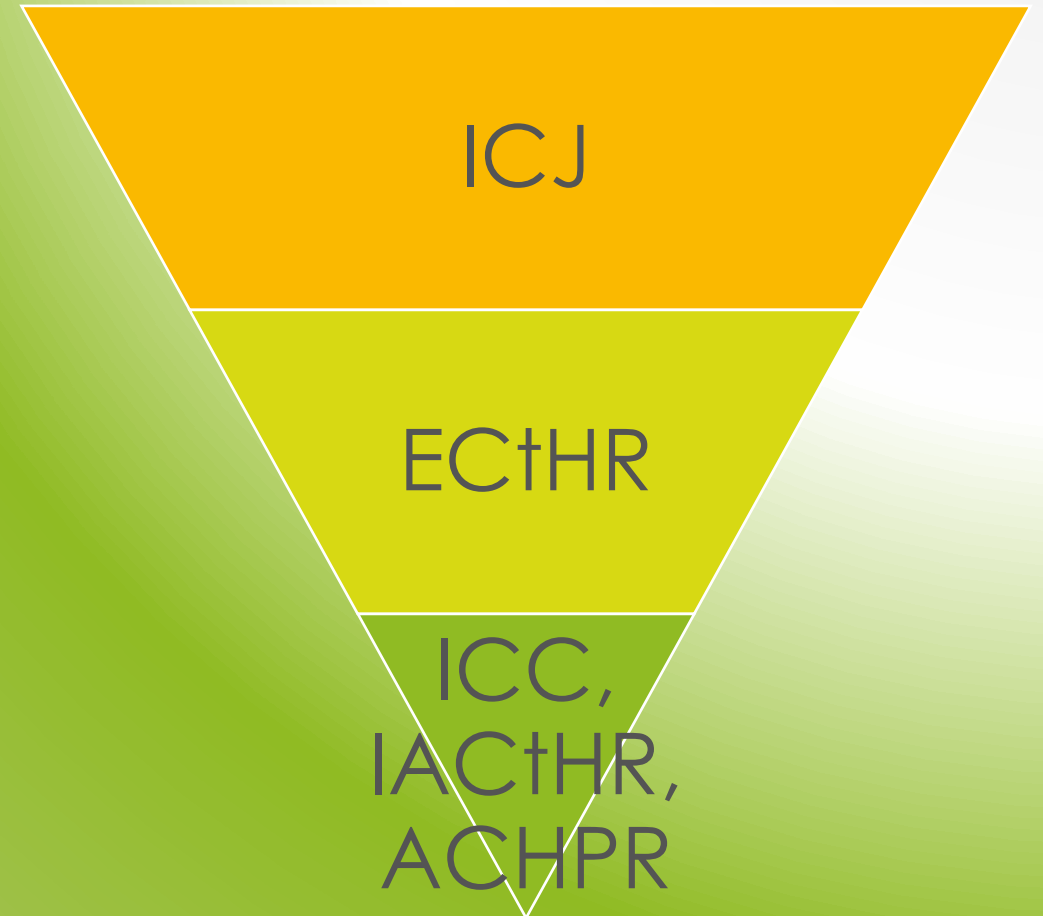
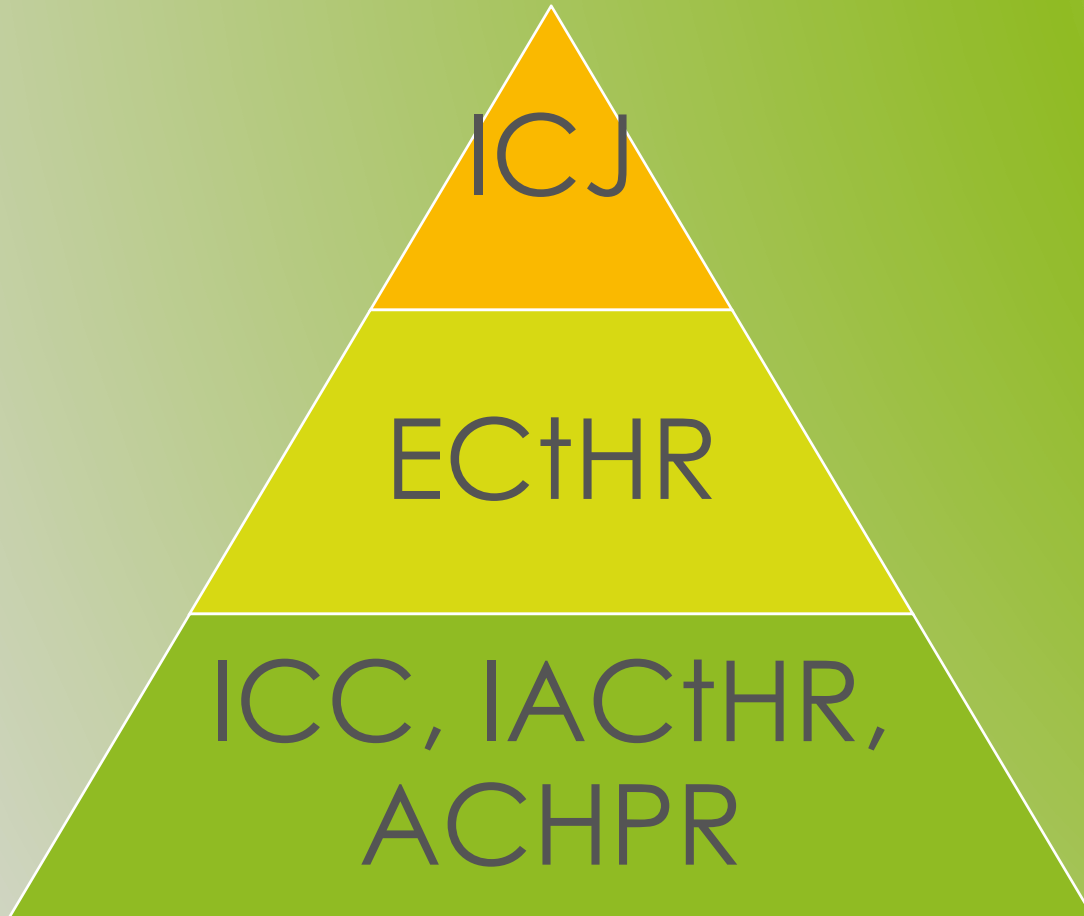
- **Did you ever feel, as a woman judge, to have to prove yourself more because of your gender, to reach your position?**
- **Hanqin Xue:** Definitely, all the time. Never take it for granted. When a woman takes a high position, people tend to doubt first before recognising her role and competence. Such attitude, consciously or subliminally, exists.
- **Hilary Charlesworth:** When women are in a minority in an environment like this, they stand out more, which sometimes generates more scrutiny of women on international courts and tribunals. Many people, when referring to female judges, will often specify “woman judge”, but male judges are not identified as such. We just assume that being a male judge is the norm. I hope we can get to a point where we are not called a woman judge, but just a judge.
- **Dame Rosalyn Higgins:** No, I have not had to overcome anything when I went to the ICJ. However, they did have to build me a separate ladies’ restroom and they had to be reminded that I needed a towel and soap, but that is the worst that has ever happened.



- **How would you describe the progress of gender parity at the ICJ, or more broadly in the judiciary?**
- **Hanqin Xue:** So far, not even a third of [ICJ] judge members are women. It is high time to recognise women's achievements. The United Nations has been playing a key role and is a driving force to promote gender parity. You have to educate people constantly about gender parity to counter the traditional bias regarding women professionals. It is not a question of numbers, it is a question of attitude. When people no longer pay attention to the numbers of women judges, that means it is no longer an issue. And currently, we still have a gap to fill.
- **Hilary Charlesworth:** In the 28 years since Dame Rosalyn Higgins was first elected to the Court, there have been four more women elected, including me. This indicates quite slow progress. There are elections to the Court this year, but it is likely that the number of women judges will either go down or will remain the same, so I don't think progress is secure in that way. In the future, I would like to see a faster rate of change. The UN system is committed to 50-50 gender parity at all levels, and I would like to see the Court achieve that. Of course, that is not up to the Court itself, but to national groups who are responsible for nominating judges and the States supporting those nominations. In the longer term, I would like to see the day when the election of women judges to the Court is not a matter of comment, when it is just taken for granted.
- **Dame Rosalyn Higgins:** For women to be able to get to that position, they have to be extremely hard-working and very able. However, I am for quality and if the best person is a woman that is splendid, if the best person is from an ethnic minority, that is splendid, but I am not looking for gender parity. The public does expect that a court handing down judgements that might affect them, or their relatives, or issues they care about, should be handed down by people who don't look different from themselves. There must be diversity to reflect society, not on a parity basis or on a percentage basis, but to represent more generally the population by having the most capable people out there.



GENDER PARITY/MANDATE V. POWER



KEY MESSAGES

- PIL was gender-neutral for a long period of time
- Gender issues and focus on women rights have been gradually and slowly introduced
- Engendering of PIL is unevenly distributed across PIL
- Introducing gender approach to PIL can be traced
 - at the normative level and
 - within certain international institutions
- There is an inversely proportional relation between gender parity in international bodies and their power/relevance