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Report on the Constitution and Activities of the International Criminal Court Bar Association (“ICCBA”)

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Executive Summary

The quality of justice before the ICC depends on the ability of Counsel for Victims and the Defence to perform their respective roles effectively and independently. The overriding goal of the ICCBA is to strengthen the capacity of independent Counsel to perform this role, and ensure that the views and concerns of Victims' and Defence Counsel and Support Staff are represented to the Court. The ICCBA continues to have an open dialogue with the Registrar and relevant Registry officials to discuss the views and concerns of Victims and Defence Counsel and Support Staff and seek improvements in their general conditions of work before the Court. It also contributed to the ongoing review of the Court's Legal Aid system through an in-depth consultation with the ICCBA's membership and the submission of detailed observations and proposals to the Registry. The ICCBA has directly, and through partners, organized a variety of substantive and skills-based trainings for Counsel and Support Staff, and has launched various online training initiatives and reference tools, through its website (www.iccba-abcpi.org), to provide easier access to expert training to its globally-based membership. Externally, the ICCBA is building a solid and worldwide network of Counsel interested in the ICC, reaching out beyond the limits of current membership to the Rome Statute, raising awareness of the ICC system in non-States Parties and supporting the Court's goal of reaching universality. Important components of this initiative include the network of Regional and National Focal Points who can explain the role and work of the ICC and the ICCBA, and reaching cooperation agreements with national and regional bar associations and other relevant entities. The ICCBA is an indispensable and reliable partner of the Court and the Assembly in achieving transparent criminal justice by enhancing the quality of representation of Victims, Defendants and other persons before the Court.

I. Background

1. Operative paragraph 83 of resolution ICC-ASP/17/Res.5 entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly of States Parties (“the Assembly”) on 12 December 2018, invited the International Criminal Court Bar Association (“ICCBA”) to report to the Assembly, through the Bureau, on its constitution and activities in advance of the eighteenth session. The present “Report on the Activities of the ICCBA” aims at providing the Assembly with information in response to this invitation.

II. ICCBA Constitution and Objectives

2. The ICCBA operates in accordance with its Constitution.

3. The ICCBA Constitution was adopted on 30 June 2016 in The Hague by Counsel registered on the List established by the International Criminal Court (“ICC”, “the Court”) pursuant to rule 22 of the ICC Rules of Procedure and Evidence (“RPE”) (“List of Counsel”). The ICCBA Constitution establishes the ICCBA as an independent representative body of Counsel pursuant to rule 20(3) of the RPE. Its establishment in June 2016 and its recognition by the Assembly in November 2016 marked the fulfillment of a long-standing goal to establish a much-needed representative association of legal practitioners focused on matters relevant to the work of List Counsel and Support Staff before the ICC.

4. The objectives of the ICCBA are set out in Article 2 of its Constitution. These include supporting the functions, efficiency and independence of Counsel practicing before the ICC (para. 1); the promotion of the highest professional standards and ethics of Counsel (para. 2) as well as their proficiency and competence in the field of advocacy, procedural and substantive criminal law and information technology systems relevant to their functions before the ICC (para. 3); the independent representation of the interests of Counsel and Support Staff (para. 7); the promotion of the rights of victims, defendants and other clients and Counsel before the Court (para. 8); the promotion of equality of arms (para. 11); and representation of interests and concerns of its members before the Assembly (para. 12).

5. The ICCBA serves as a collective voice for independent Counsel and Support Staff who represent victims, defendants and other actors (e.g. witnesses, States) before the ICC, provides a range of support and services to its membership, and acts as a forum for discussion on all matters pertaining to the ICC. As an independent body deeply and directly involved in ICC activities, it also aims to contribute to raising awareness on issues which may affect the functioning of the Court, in order to enhance the quality of justice at the ICC required under the provisions of the Rome Statute and other recognized texts pursuant to Article 2(5) of its Constitution. Because its constituency extends to members of the legal profession in all countries, be they States Parties or not, the ICCBA seeks to develop and solidify its relationships with international, regional and national bars and other relevant organisations in order to promote and strengthen the Rome Statute system as well as discuss issues of mutual concern, including in countries and regions where the Court itself may have difficulties accessing.

6. The ICCBA is independent of the Court and is registered as a non-profit foundation (“*Vereniging*”) under the laws of The Netherlands.

7. The ICCBA is funded primarily by membership fees. Its activities and outreach are the product of its members’ voluntary contribution of their time and energy.

III. Summary of ICCBA Activities and Achievements 2019

8. Throughout the year, the ICCBA provided training for its members. In May 2019, the ICCBA held a three-day intensive advocacy training course at the Court. This course was attended by defence and victim team members, as well as several staff members from the Office of the Prosecutor. In June 2019, a half-day seminar was held before the ICCBA General Assembly. The seminar reflected on the experience of defence and victims counsel practicing before the Court. The ICCBA continues to expand its library of online training which covers substantive law, and procedural and practical aspects of working on cases at the Court. This online training portal facilitates easier access to expert training to the ICCBA's globally-based membership, some of whom are unable to be present in person in The Hague.

9. In February 2019, the ICCBA issued a letter to all counsel on workplace harassment. The letter outlined the ICCBA's position on workplace harassment, bullying and abuse of power, and the measures which the ICCBA will be implementing to address the issue. The ICCBA takes the well-being of victims and defence team members seriously and has engaged on a number of initiatives and taken various steps to help ensure that legal team members are aware of their obligations and behave collegiately, and fairly with each other. The ICCBA has previously also issued a Directive on the Establishment and Functioning of the ICCBA Hotline and Complaint Mechanism for Harassment and Sexual Harassment, which it is working to implement, and is additionally engaging with the ICC Staff Union Council to discuss and work on issues of mutual concern in this area. The ICCBA also provided a mindfulness in the workplace presentation for members in January 2019.

10. The ICCBA also developed and posted on its website various reference tools to assist Counsel and Support Staff to better understand the legal and policy framework and internal functioning of the Court. These include an Index of ICC Administrative Issuances of Relevance for Counsel and Support Staff, two Legal Analyses on the ICC Internal Accountability Mechanism and Policies, and the ICC Information Protection Policy Framework, as well as a comprehensive report by the ICCBA Working Group on Tax on the Income Tax Situation of Counsel and Support Staff, with propositions and recommendations on the way forward.

11. The ICCBA is continuing consultations with the ICC Registrar in relation to the Legal Aid Scheme and welcomes the enhanced dialogue on this issue. Counsel and Support Staff at the Court continue to be the most poorly remunerated compared with their counterparts at other international courts and tribunals. The ICCBA firmly holds that it is in the interests of both the ASP and the ICC to have highly qualified and competent Counsel and Support Staff at the Court to ensure that fair trial rights, including the right to an expeditious trial, are respected.

12. A major issue which is of concern to the members of the ICCBA is taxation of the fees of Counsel and Support Staff in the Host State. This is a matter that has been the subject of several meetings between the ICCBA and Registry of the Court throughout 2019. At the date of this report there has been no resolution to this issue which potentially affects many defence and victims' counsel, and in particular their Support Staff. In April 2019, the ICCBA sent a Submission on the Taxation of Legal aid Fees in the Netherlands to the Committee on Budget and Finance, which provided an overview of the situation and requested the assistance of the ASP on this issue.

13. Meetings between the ICCBA Presidency and the Principals of the Court took place throughout the year to discuss various ongoing issues. The ICCBA welcomes the openness of the Principals to engage in such discussions, which are proving invaluable in working towards resolving issues which are faced by Counsel and Support Staff. These issues included: office space for the ICCBA at the seat of the Court, the involvement of the ICCBA in outreach activities of the Court, taxation issues encountered by Counsel and Support Staff, mandatory membership of the ICCBA for List Counsel, and training activities.

14. Members of the ICCBA Presidency and the Executive Council have represented the ICCBA at several events throughout 2019 including: the opening of the judicial year; the African Bar Association Annual Conference; an event by Redress on victims' rights to reparation before the ICC; the Pan African Lawyers Union Annual Conference; the International Association of Lawyers Annual Congress (UIA); the International Meetings of the Defence; and the Nuremberg Academy Forum.

15. The ICCBA continues to expand its affiliation agreements with organisations for lawyers and bar association around the world and in 2019 signed agreements with the International Association of Lawyers (UIA), the Order of Francophone and Germanophone Bars of Belgium, and the Kuwait Bar Association. The ICCBA has previously signed agreements with the African Bar Association and the Federation of European Bars. These agreements provide for cooperation and mutual assistance in areas of common interest as well as disseminating information regarding the Court and the Rome Statute.

16. The ICCBA continues with the publication of a quarterly newsletter which includes updates on proceedings at the ICC as well as interviews and opinion papers. The Newsletter aims to keep the public updated about the work of the ICCBA and the ICC; past editions are available on the ICCBA website.

Annex

Proposed language for Assembly's Resolution on Strengthening the International Criminal Court and the Assembly of States Parties, section on Counsel

Counsel

1. *Recalling* that the Assembly at its last three previous sessions has taken note of the establishment of the International Criminal Court Bar Association (“ICCBA”) and invited it to report to the Assembly;¹
2. *Noting* that the Bureau has reported that the ICCBA “can independently play a direct role on future discussions with the Court on the legal aid remuneration policy”,² and has recognized, in the context of organizing the Assembly’s General Debate, the ICCBA’s distinct mandate;³
3. *Recalling* that rule 20(3) of the Rules of Procedure and Evidence provides, for purposes such as the management of legal assistance, that “the Registrar shall consult, as appropriate, with any independent representative body of counsel or legal associations, including any such body the establishment of which may be facilitated by the Assembly of States Parties”;
4. *Recalling* that the Assembly has previously noted the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20(3) of the Rules of Procedure and Evidence;⁴
5. *Recalling* that the ICCBA, a non-profit, voluntary organization funded by membership fees, has thrice reported that it was established to serve as an independent representative body of Counsel pursuant to rule 20(3) of the Rules of Procedure and Evidence;⁵
6. *Recognizes* the ICCBA, in accordance with rule 20(3) of the Rules of Procedure and Evidence, as an independent representative body of counsel and a legal association;
7. *Takes note* of the report on the ICCBA’s activities and *invites* it to report to the Assembly, through the Bureau, on its activities in advance of the nineteenth session and subsequent sessions.

¹ See ICC-ASP/17/20, Resolution ICC-ASP/17/Res.5 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 83 (noting the establishment of the International Criminal Court Bar Association and inviting it to report to the ASP), 12 Dec. 2018; ICC-ASP/16/20, Resolution ICC-ASP/16/Res.6 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 73 (same), 14 Dec. 2017; ICC-ASP/15/20, Resolution ICC-ASP/15/Res.5 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 62 (same), 24 Nov. 2016.

² See ICC-ASP/15/25 (Report of the Bureau on legal aid) at para. 13 (noting that the ICCBA “can independently play a direct role on future discussions with the Court on the legal aid remuneration policy”), 11 Nov. 2016.

³ See Bureau decision of 18 October 2017, p. 3 (identifying the ICCBA as a distinct entity within the larger grouping of “observers and non-governmental organizations”); Bureau decision of 15 November 2018, Annex III (Guidelines for the preparation and conduct of sessions of the Assembly), Appendix, Section 2(a) (listing four categories of speakers for the General Debate, the last of which is “International Criminal Court Bar Association; and non-governmental Organizations”).

⁴ See ICC-ASP/17/20, Resolution ICC-ASP/17/Res.5 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 82 (referring to Rule 20(3)), 12 Dec. 2018; *see also* ICC-ASP/16/20, Resolution ICC-ASP/16/Res.6 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 72 (same), 14 Dec. 2017; *see also* ICC-ASP/15/20, Resolution ICC-ASP/15/Res.5 (Strengthening the International Criminal Court and the Assembly of States Parties) at para. 61 (same), 24 Nov. 2016.

⁵ See ICC-ASP/17/38 (Report on the constitution and activities of the International Criminal Court Bar Association (“ICCBA”)), at para 3 (reporting that the “ICCBA Constitution establishes the ICCBA as an independent representative body of Counsel pursuant to rule 20(3) of the Rules of Procedure and Evidence”) (emphasis added), 27 November 2018; *see also* ICC-ASP/16/30 (Report on the constitution and activities of the International Criminal Court Bar Association (“ICCBA”)), at para 3 (reporting that the “ICCBA Constitution establishes the ICCBA as an independent representative body of Counsel pursuant to rule 20(3) of the RPE”) (emphasis added), para. 14 (reporting that “all welcomed the establishment of the ICCBA as an independent representative body of Counsel pursuant to rule 20(3) of the ICC RPE”) (emphasis added), 13 November 2017.