

**Cour  
Pénale  
Internationale**

**International  
Criminal  
Court**

THE REGISTRAR

**2<sup>nd</sup> ASSEMBLY OF STATE PARTIES**

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(English version – Originally pronounced in French )

**New-York, 10 September 2003**

The International Criminal Court is firmly convinced that without defence worthy of its name no fair trial is possible. After the judges and Prosecutor, the defence is the third pillar of a court of justice.

One of the Registrar's responsibilities pursuant to rule 20 of the Rules of Procedure and Evidence is to set up his teams "in a manner that promotes the rights of the defence, consistent with the principle of fair trial as defined in the Statute". The Registry is, in fact, the only organ of the Court which, when dealing with this subject, does not face a conflict of interests.

This is the reason that, from the outset, first as Director of Common Services and now as Registrar, I have committed myself and my teams to developing this dimension of the Court.

How does one conceive of an organisation able to provide quality defence? What does this mean in terms of both the resources used to organise the Registry and the financial resources made available to the defence?

This morning, I would like to inform you first about those areas in which our work on defence issues has progressed and then on the working mechanisms we have been using.

#### 1. Areas

Initially we have had to work on very practical areas.

In particular, we have had to provide working conditions at the Court for defence counsel for the accused and the victims within the limitations of the building the host country has currently made available to us:

- problems of counsel having access
  - to the Court and to movement within the building in view of security concerns,
  - to the library
  - to the cafeteria
- problems relating to the type of facilities required for them to do their work
- etc...

Working conditions for counsel however also include easy access to the documents needed for trials and to information on the status of the proceedings when they are abroad. How, for instance, can we facilitate communication of pages running sometimes into the millions? How can we organise hearings by video-conferencing in order to avoid the need for travel to attend one morning session?

In addition to this, more substantive questions require urgent solutions.

These questions, pursuant to rule 8 of the Rules of Procedure and Evidence, relate to the drawing up of a draft Code of Professional Conduct which the Registrar must propose to the President of the Court who shall then transmit it to the wisdom of the Assembly of States Parties. Similarly, the Register must propose to the judges the criteria and procedures for assignment of legal assistance which, as stated in rule 21, are to be included in the Regulations. The criteria for a counsel's name to be placed on the list of those who may be assigned must be determined.

Although these questions must be resolved immediately, they represent only the start of the long-term work to ensure that the ICC has a solid defence structure.

Over the coming months and years, many other urgent matters will arise. I have noted merely the first. Among these will be the issues of how the Court's permanent buildings are to be designed and the definition of equality of arms between the prosecution and defence. The latter is an extremely

complex question which cannot be reduced to simple mathematics. In-depth reflection with all concerned will be required.

## 2. Method used

As in all areas, we have decided to take up our positions only after dialogue with counsel for the accused and the victims. The Court must turn to their expertise to reach the most appropriate decisions.

Our resolve is firmly supported by the fact that rule 20(3) of the Rules of Procedure and Evidence logically provides 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."

In November 2002, we initiated contacts to discuss working conditions with counsel, in particular, with those who appear, or have appeared, before international criminal tribunals. We did so in order to identify what sort of difficulties might arise. Such contacts have helped us to arrive at conclusions in respect of the Court's organisation. We must continue working on this subject in order to improve conditions for receiving defence counsel for the accused and the victims at the Court and, at the same time, take existing constraints into account.

We have had many consultations on the code of professional conduct, the assignment of counsel and the list of counsel.

In January of this year we asked several international associations for their opinions on the drawing up of a code of conduct for counsel and issues relating to legal assistance. We received two draft codes, one from the International Bar Association (IBA) and one from the International Criminal Bar (ICB), as well as materials from other associations such as the International Union of the Latin-American Bar Associations and the European Criminal Bar. With knowledge gleaned from these, we began work on a draft code which was submitted to the judges at the June plenary session for initial informal consultation. Further to these discussions, in July 2003 we sent a questionnaire on all these issues to 60 experts in 25 countries with various legal cultures. The deadline for filing expert opinion is 15 September. A paper will be drafted to summarise the responses and will be discussed at The Hague during two days of expert consultations. The judges will receive the drafts at their November plenary and the definitive version of the Code of Professional Conduct for Counsel will be submitted to your Assembly for deliberations at your next meeting.

We will of course continue to work closely with counsel, and especially with existing associations or ones established specifically for the needs of the ICC so long as they demonstrate that they are geographically representative enough to meet the needs of a universal court and, like the ICB for example, also represent various legal systems.

In this same spirit, I plan to establish an advisory body to work with me composed of senior level specialists recognised for their expertise in their fields with whom I will meet every six months. The purpose will be to hear their opinions so that I can effectively carry out the important mission entrusted to me pursuant to the texts your Assembly has approved. This project, like the others, will be based on concerted action.

I thank you for your attention and remain available for any questions you might wish to ask.