



## Assembly of States Parties

Distr.: General  
27 November 2018

Original: English

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### Seventeenth session

The Hague, 5-12 December 2018

## 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 its membership. The ICCBA has directly, and through partners, organized a variety of substantive and skills-based trainings for Counsel and Support Staff, and is has launched various online training initiatives and reference tools, through its website ([www.iccba-abcpi.org](http://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 73 of resolution ICC-ASP/16/Res.6 entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly of States Parties (“the Assembly”) on 14 December 2017, 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 seventeenth 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 Rules of Procedure and Evidence. 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 organizations 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 a non-profit organization 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 2018

8. In February 2018, the ICCBA sent questionnaires and conducted voluntary interviews with candidates for the position of ICC Registrar. The purpose of the interviews were to seek the views of the potential candidates' on issues which are pertinent for the ICCBA and its membership. A full report of this process was distributed to the judges of the Court to assist with their election of the new Registrar.

9. In March 2018, the first issue of the ICCBA Newsletter was published and included updates on proceedings at the ICC as well as interviews with judges and opinion papers. The Newsletter aims to keep the public updated about the work of the ICCBA and the ICC and will be published every three months; past editions are available on the ICCBA website.<sup>1</sup>

10. In March, representatives of the ICCBA met with the ICC Head of Internal Audit to discuss the ICCBA's Legal Analyses on the ICC Information Protection Policy Framework and on the ICC International Accountability Mechanisms and Policies.

11. The ICCBA issued a Declaration on the Obligations under the ICC Code of Conduct and Proposed Amendments to all members in March 2018. The Declaration reiterates the standards which are expected from Counsel practicing at the Court and reaffirms that no form of harassment can be tolerated. In November 2018, the ICCBA Working Group on Harassment also issued a Directive on Establishment of Hotline and Complaint Mechanism for Harassment and Sexual Harassment aimed at providing a confidential complaints mechanism for defence and victim team members, as well as other participants in proceedings.

12. Throughout the year, the ICCBA provided training for its members as well as staff from the Court. In May 2018, in cooperation with Penn State Dickinson Law, the ICCBA held a five-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. Also in May, in conjunction with the University of Oxford, a two-day expert workshop was held on the topic of advancing the impact of victim participation at the ICC and second workshop took place in September at the University of Oxford. In June 2018, a one-day seminar was held in before the ICCBA General Assembly to mark the 20<sup>th</sup> anniversary of the Rome Statute. The seminar reflected on the experience of defence practicing before the Court. Members of the ICCBA were also invited to give training to lawyers in Georgia in June 2018 by the Norwegian-Helsinki Committee. Approximately 20 lawyers were given expert training on victim representation before the ICC. The partnership with the Siracusa International Institute continued with a specialization course on "The Fundamentals of Defence Rights before the International Courts" which was held in June 2018. The ICCBA continues to expand its library of online training which covers substantive law, procedural and practical aspects of working on cases at the Court. This online training portal facilities easier access to expert training to the ICCBA's globally-based membership who are unable to be present in person in The Hague.

13. 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 Analysis on the ICC Internal Accountability Mechanism and Policies and ICC Information Protection Policy Framework and 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.

14. The ICCBA is continuing consultations with the ICC Registrar in relation to the Legal Aid Scheme and welcomes the enhanced dialogue on this issue. In November 2018, the ICC held a consultation meeting with its membership to seek their views on the proposed draft Legal Aid Policy which was circulated in October 2018. 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

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<sup>1</sup> [www.iccba-abcpi.org](http://www.iccba-abcpi.org).

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.

15. 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.

16. Members of the ICCBA Presidency and the Executive Council have represented the ICCBA at several events throughout 2018 including; an event at the Embassy of the United Kingdom of Great Britain and Northern Ireland on victim participation, the 20<sup>th</sup> anniversary of the Rome Statute events held at the ICC, a seminar to mark the 20<sup>th</sup> anniversary of the Rome Statute organized by UNESCO and the Catholic University of Lyon, a Supranational Law Lecture organized by the Grotius Centre, the General Meeting of the International Legal Assistance Consortium, the African Bar Association Annual Conference, the International Meetings of the Defence, the Nuremberg Academy Forum and an event on the rights of the accused organized by the embassies of France and Senegal. The ICCBA Presidency also met with a delegation of Palestinian lawyers who visited the ICC in September 2018.

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