



Twentieth session

The Hague, 6-11 December 2021

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

Content

	<i>Page</i>
Executive Summary	2
I. Background	3
II. ICCBA Constitution and Objectives	3
III. Summary of ICCBA Activities and Achievements 2021	4

* Re-issued for technical reasons.

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 at 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. The ICCBA has directly, and through partners, organised 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 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 concluding cooperation agreements with national and regional bar associations and other relevant entities. The ICCBA is an indispensable and reliable partner of the Assembly and the Court in achieving transparent criminal justice by enhancing the quality of representation of Victims, Defendants and other persons before the Court. The ICCBA remains the only independent representative body of counsel recognised by the Assembly pursuant to the ICC Rules of Procedure and Evidence¹ and welcomes this increased recognition. The ICCBA will continue to work with the Assembly to strengthen the Court and the Rome Statute system.

¹ Operative paragraph 80 of resolution ICC-ASP/18/Res.6 entitled "Strengthening the International Criminal Court and the Assembly of States Parties", adopted by the Assembly of States Parties on 6 December 2019.

I. Background

1. Operative paragraph 84 of resolution ICC-ASP/19/Res.6 entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly of States Parties (“the Assembly”) on 16 December 2020, 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 twentieth 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 21-2 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. As the ICCBA’s 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 2021

8. Throughout the year, the ICCBA provided training to its members. In March 2021, the ICCBA, in cooperation with the Registry, organized the four-day training for list counsel which was very well received by participants. The ICCBA continues to expand its library of online training which covers substantive and procedural law as well as practical aspects of working on cases at the Court. The ICCBA 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. During 2021, the ICCBA has also been engaging with the Review Mechanism which was mandated to implement the recommendations of the Independent Expert Review. The ICCBA welcomed the recommendations which the Independent Expert Review included in their final report which stated that the ICCBA should be involved as one of the principal stakeholders in discussions on the review process. The ICCBA will continue work with the Review Mechanism and the Court to implement these recommendations. More specifically, the ICCBA has participated actively in many discussions organized by the facilitator on legal aid and will continue to have a leading role in upcoming exchanges concerning legal aid and working conditions of Counsel and members of legal teams.

10. The ICCBA takes the well-being of victims and defence team members seriously and has engaged in 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 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.

11. 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, the Review Mechanism and the Registry of the Court throughout recent years. At the date of this report, there has been no resolution to this issue which affects many defence and victims' counsel and their Support Staff. The ICCBA welcomed the report of the Facilitator on Legal Aid, presented at the eighteenth session of the Assembly of States Parties, indicating that the implementation of a new legal aid policy should be postponed pending a resolution of the taxation issue. The ICCBA has continued to engage with the Legal Aid Facilitator throughout 2021. The ICCBA urges the Assembly to assess the issue of taxation in the Host State and find a solution to alleviate the situation for legal team members and move forward with the much-needed revision of the legal aid policy.

12. 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, services for legal representatives for victims, insurance for legal team members on mission, the aforementioned taxation issue, mandatory membership of the ICCBA for List Counsel, and training activities. In April 2021, the ICCBA was provided an office space within the Court and extends its appreciation to the Registrar for providing a much-needed permanent base within the Court premises. The ICCBA will continue to work with the Court on the other outstanding issues and it is hoped that these can be resolved with the Registry in the near future.

13. Due to the global pandemic it has proved difficult for the ICCBA to engage in-person outreach activities this year. The ICCBA was invited to speak at the opening of the judicial year in January, and also attend the swearing in of the new judges and Prosecutor. This illustrates the importance attached to defence and victims' representation before the Court.

14. The ICCBA continues to expand its affiliation agreements with organisations for lawyers and bar association around the world and in 2021 signed an agreement with the Ordine Avvocati di Roma. The ICCBA has previously signed agreements with the Conseil national des barreaux (CNB), the African Bar Association, the Federation of European Bars, the International Association of Lawyers (UIA), the Order of Francophone and Germanophone Bars of Belgium and the Kuwait Bar Association and is also a member of the International Legal Assistance Consortium. These agreements and memberships provide for

cooperation and mutual assistance in areas of common interest as well as disseminating information regarding the Court and the Rome Statute.
