

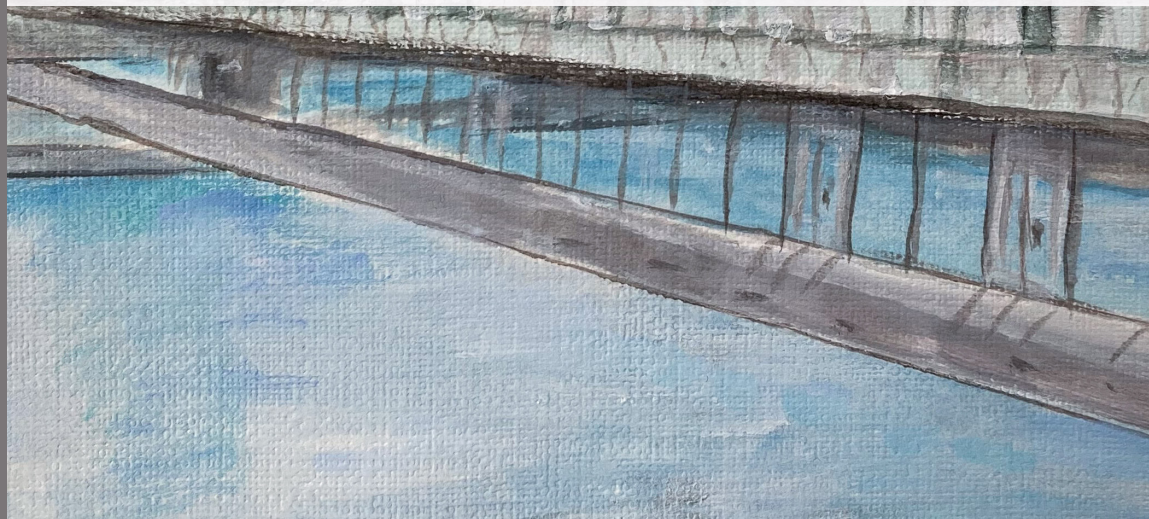
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## **The Past, Present and Future of the International Criminal Court**

Alexander Heinze and Viviane E. Dittrich (editors)



## **E-Offprint:**

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**Front cover:** *An artistic rendering of the permanent premises of the International Criminal Court in The Hague, by Katrin Heinze, 2021.*

## Founding an International Criminal Court Bar

Philippe Currat and Brice Van Erps\*

### 18.1. Introduction

Drawing on the authors' own experience and hands-on involvement in the proceedings and negotiations leading up to the creation of the International Criminal Court Bar Association ('ICCBA'), this chapter recounts its creation. The authors highlight the importance and the need for a long overdue bar association that is in line with international standards. It recalls the role played by the important mobilization and self-organization of the profession to obtain, in collaboration with the Registrar of the Court, a bar association that is independent of the Registry of the Court and that can fulfil its mission to uphold professional standards and ethics, as well as protect its members from persecution and improper restrictions and infringements and more largely co-operate with the organs of the Court and other entities who gravitate around the International Criminal Court ('ICC') in furthering the ends of justice and public interest.

Firstly, this chapter gives an overview of the situation before the creation of the ICCBA and sets forth the challenges and solutions encountered up to the creation of the ICCBA. Secondly, the authors depict the situation as it is with the implementation of the ICCBA and lastly, this chapter postulates what can be expected of the future of the ICC provided with a bar association.

### 18.2. The Past of the ICC: No Bar Expected

#### 18.2.1. The Tools Available *Ab Initio*

According to the first two paragraphs of the Preamble of the Basic Principles on the Role of Lawyers, adopted by the eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Ha-

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vana, Cuba, on 27 August to 7 September 1990 ('Basic Principles on the Role of Lawyers'), the role of lawyers is closely linked to the promotion of human rights and fundamental freedoms, without distinction as to race, sex, language or religion, in the establishment of the conditions under which justice can be maintained. Furthermore, the last paragraph of said Preamble states that

professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest.<sup>1</sup>

Nevertheless, less than three years thereafter, the Statute of the International Criminal Tribunal for the former Yugoslavia ('ICTY'), adopted on 25 May 1993<sup>2</sup> made no mention of the Defence in the organization of the Tribunal; the same is to be said for the International Criminal Tribunal for Rwanda ('ICTR').<sup>3</sup> When discussing the creation of a permanent international criminal court, the States only briefly mentioned, during the preparatory works, in 1995, the idea of a bar for the ICC, without pursuing any step forward in that direction.<sup>4</sup> Once again, only the rights of the accused or of the Defence are mentioned in the Rome Statute, in Articles 56 or 67 to 69, but the Defence as an institution remains absent from the organization of the Court. Finally, it is part of the functions of the Registry to organize the Defence, according to Rule 13 of the Rules of Procedure and Evidence of the ICC ('RPE'), that provides that the Registrar shall put in place regulations to govern the operation of the Registry: "The regulations shall provide for defense Counsel to have access to appropriate and reasonable administrative assistance from the Registry".<sup>5</sup> But there is no institution he

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<sup>1</sup> "Basic Principles on the Role of Lawyers", 27 August to 7 September 1990, Preamble, p. 1, para. 2 ('Basic Principles on the Role of Lawyers').

<sup>2</sup> See Statute of the International Criminal Tribunal for the former Yugoslavia, 25 May 1993 (<http://www.legal-tools.org/doc/b4f63b/>).

<sup>3</sup> Statute of the International Criminal Tribunal for Rwanda, 8 November 1994 (<http://www.legal-tools.org/doc/8732d6/>).

<sup>4</sup> William Schabas and Yvonne McDermott, "Article 67", in Otto Triffterer and Kai Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary*, 3rd. ed., C.H. Beck, Hart and Nomos, 2016, p. 1653, para. 4.

<sup>5</sup> ICC RPE, Rules of Procedure and Evidence, 9 September 2002, Rule 13, Part II. A ('ICC RPE') (<http://www.legaltools.org/doc/8bcf6f/>).



may consult with, on any matters which may affect the operation of the Defence.

It follows from Rule 20 RPE, that the Registrar (and not the Registry) assumes certain responsibilities relating to the rights of the Defence. In particular and based on a direct reference to Article 43(1) of the Rome Statute, it is stated that “the Registrar shall organize the staff of the Registry in a manner that promotes the rights of the Defence, consistent with the principle of fair trial as defined in the Statute”.<sup>6</sup> It is particularly interesting to note that Article 43(1) of the Rome Statute reads as follows: “The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court”. Is this really to say that the organization of the Defence counts among those “non-judicial aspects of the administration and servicing of the Court”? Following the latest commentators in English of that article,

It is apparently intended to ensure that the Registry does not interfere with judicial prerogatives. However, it is suggested that this limitation should be read narrowly only to cover any administrative aspect of the Court’s judicial decision-making process such as the Judges’ deliberations or consultations amongst the Judges themselves. It is not intended to affect Registry’s duties to provide for the management of the Court’s judicial activities, including scheduling and support services.<sup>7</sup>

Clearly, the Defence is not properly taken into consideration.

Nevertheless, the Registrar, in organizing the staff and the financial administration of the Registry in a manner that promotes the rights of the Defence, shall provide support, assistance, and information to all Defence Counsel appearing before the Court in the way described in Rule 20 RPE, including in ensuring the professional independence of Defence Counsel. The Registrar occupies accordingly a central position regarding not only the promotion of the rights of the Defence, but also the organization of the Defence. By entrusting the Registrar with the responsibility of advising the Prosecutor and the Chambers on relevant defence-related issues, the RPE disregard some of the Basic Principles on the Role of Lawyers. It is true that the Registrar may also co-operate with national defence and bar associations or any other independent representative body of counsel and legal

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<sup>6</sup> *Ibid.*, Rule 20(1).

<sup>7</sup> Magda Karagiannakis, “Article 43(1)”, in Triffterer and Ambos (eds.), 2016, p. 1281 para. 7, see above note 4.

associations to promote the specialization and training of lawyers in the ICC law and regulation, but two observations seem necessary here. Firstly, that this is left to the Registrar's own appreciation to consider when such a co-operation may be appropriate and, secondly, that we can doubt the ability of almost all national or regional bar associations in training their members in a specialization that is, by nature, always exercised outside of their jurisdiction.

Rule 20(3) ICC RPE provides that:

for purposes such as the management of legal assistance in accordance with Rule 21 and the development of a Code of Professional Conduct in accordance with Rule 8, 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.

Three points are of paramount importance here.

The first interesting point mentioned in Rule 20(3) ICC RPE is legal assistance. This means, pursuant to Articles 55(2)(c) and 67(1)(d) of the Rome Statute, the right to conduct the Defence through legal assistance of the accused's choosing, to be informed, if the accused does not have legal assistance, of this right and to have legal assistance assigned by the Court in any case where the interests of justice so require, and without payment if the accused lacks sufficient means to pay for it. Based on Rule 21 ICC RPE, the Registrar shall propose the establishment of criteria and procedures for assignment of legal assistance in the Regulations, "following consultations with any independent representative body of Counsel or legal associations".<sup>8</sup> The Registrar shall create and maintain a list of counsel, who meet the criteria set forth in Rule 22 and the Regulations of the Court,<sup>9</sup> from which a person shall freely choose his or her counsel. According to Rule 22(3) ICC RPE, "In the performance of their duties, Counsel for the defense shall be subject to the Statute, the Rules, the Regulations, the Code of Professional Conduct for Counsel adopted in accordance with rule 8 and any other document adopted by the Court that may be relevant to the performance of their duties".<sup>10</sup>

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<sup>8</sup> ICC RPE, Rule 21(1), see above note 5.

<sup>9</sup> *Ibid.*, Rule 21(2), and ICC, Regulations of the Court, 26 May 2004 (<http://www.legal-tools.org/doc/2988d1/>).

<sup>10</sup> ICC RPE, Rule 22(3), see above note 5.

Here lays the second point, in the determination of the professional conduct a counsel must adopt before the Court. It is particularly interesting to observe that, in the absence of a bar, Rule 8 ICC RPE states that it is the Presidency that shall draw up a draft Code of Professional Conduct for Counsel, based on a proposal made by the Registrar, after consultation with the Prosecutor, which is to be transmitted to the Assembly of States Parties ('ASP'), for adoption. This is the sole text in the ICC system, to be adopted by the States Parties after the participation of all the judicial organs of the Court, and this is certainly a mark of its importance.

In the Resolution by which the Code of Professional Conduct for Counsel is adopted, the States Parties formally recognize "the general principles governing the practice and ethics of the legal profession".<sup>11</sup> Here we learn of the existence of such general principles that allegedly govern the practice and ethics of the legal profession in international law without however being told which they are. Surely, it is hard to consider that all the Articles of the Code would be the expression of general principles recognized worldwide, especially regarding the very particular construction of the disciplinary regime, which is based on a form of complementarity with the national authorities and which refers to the bar association of which a counsel is a member or any other organ competent to regulate and control his or her professional activity. Looking back and again to the last paragraph of the Preamble of the Basic Principles on the Role of Lawyers, the following statement is of a particular interest:

professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest.<sup>12</sup>

The ICC definitely needed a bar and, this is the third point, in drafting and adopting the RPE, the States Parties reserved to themselves the role of facilitators in the establishment of an independent representative body of counsel.

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<sup>11</sup> ICC ASP, Code of Professional Conduct for Counsels, ICC-ASP/4/Res.1, 2 December 2005, Preamble, p. 1, para. 4 ('Resolution ICC-ASP/4/Res.1') (<http://www.legal-tools.org/doc/f9ed33/>).

<sup>12</sup> Basic Principles on the Role of Lawyers, last paragraph of the Preamble, see above note 1.

During the Geneva Symposium of 2012, organized by the authors to celebrate the tenth anniversary of the ICC on the theme “Assembling the Defense”, Elise Groulx, a founding member of both the International Criminal Defence Attorneys Association and the International Criminal Bar (‘ICB’), made a statement, recalling:

The Defence was the cause that nobody wanted to endorse or support. [...] I cannot tell you how unpopular the issue was at first in that forum and this lasted for quite a while. [...] Our argument was that getting fair trial procedure and the right to Counsel down on paper was only Step 1. The rights are only guaranteed in reality when we take a Step 2: ensuring institutions are in place to enforce them.<sup>13</sup>

Before the ICTY, it was the same kind of self-organization movements that permitted the creation of an Association of Defence Counsel, but it was also the same difficulties that complicated its official recognition.<sup>14</sup> At the ICC, the situation is quite different. The Court is not an *ad hoc* tribunal created by United Nations Security Council resolution, but a permanent institution based on an international multilateral treaty. The question of a formal recognition of a bar association is thus not left in the sole hands of the judges through a modification of the RPE but requires a decision of the States Parties and can therefore, depending on the forms envisaged, require an amendment to the Rome Statute. Such a solution was definitely impractical and another form of creation of a bar had to be conceived, one that did not imply any amendment to the Rome Statute and, as far as possible, the less possible amendments to any other texts adopted by the States Parties.

### **18.2.2. The Attempt of the International Criminal Bar**

The International Criminal Bar was born in Montreal on 15 June 2002,<sup>15</sup> just two weeks before the entry into force of the Rome Statute. Some 400 prominent lawyers coming from more than 50 countries around the world, particularly worried by the fact that there was no institutional representation of the Defence before the ICC,<sup>16</sup> decided to meet in Montreal. After

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<sup>13</sup> Statement by Elise Groulx, “Rassembler la défense”, ICB Conference of Geneva, 29–31 March 2012 (unpublished, the manuscript of the presentation is on file with the authors).

<sup>14</sup> See Association of Defence Counsel, “About Us” (available on its web site).

<sup>15</sup> See International Criminal Bar, “History” (available on its web site).

<sup>16</sup> See *ibid.*



that, they held the ICB first general assembly in Berlin, on 21 and 22 March 2003.<sup>17</sup> Since its creation, the force of the ICB was the diversity and the drive of individual lawyers, personally involved and interested in international criminal law, but also of many local or national bars. Among them, we can mention the Bar of Paris and the French Conseil national des barreaux, the German Deutscher Anwaltverein, the Bar of England and Wales, the American Bar Association, the Bars of Lebanon or Morocco, of Hong Kong, the Bar of Québec, the national Bars of Canada, Costa Rica, the Democratic Republic of Congo, Malaysia, Mali, Japan, South Africa, South Korea or the Swiss Federation of Lawyers, and many others, as well as international associations of lawyers, for instance the Inter-American Bar Association, the Canadian Council of Criminal Defence Lawyers, the European Bars Federation (‘FBE’), the Union Internationale des Avocats (‘UIA’), or the International Criminal Defense Attorneys Association that all worked together. It was particularly important to involve in the process local and national bars and international organizations of lawyers. Historically, at least in Europe and North America, the bar associations have largely come from the self-organizing movements of the legal profession, around the idea of guaranteeing the quality of training of lawyers and protecting their independence in the exercise of their profession, in order to guarantee the interests of justice.<sup>18</sup> The local and national bars also have extensive experience in defining and enforcing ethical and professional rules for the profession; they have long been recognized as key interlocutors by the States with regard to the exercise of the legal profession. It is therefore interesting to recall, for instance, the European Bars Federation Resolution of June 2002, which reads:

FBE, [...]

Reaffirms that the International Criminal Court, in order to ensure the legitimacy of its functioning, must recognise the right of Counsel as the “third pillar” of the International Criminal Court.

Declares the following to be essential principles: [...]

4. The preservation of the prerogatives of Bars and Law Societies to govern the qualification of Counsel as well as dis-

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<sup>17</sup> See *ibid.*

<sup>18</sup> See Arman Sarvarian, *Professional Ethics at the International Bar*, Oxford University Press, International Courts and Tribunals Series, 2013, p. 10–16.

disciplinary sanctions and procedures under the national codes of ethics.

5. The need for assistance and advice on ethical issues for Counsel appearing before the International Criminal Court, to be provided by a body representing Counsel and recognised by the International Criminal Court.

Resolves that in order to ensure that these principles continue to be respected before the International Criminal Court:

1. There should be an institution representing Counsel before the International Criminal Court open to all bars and Law Societies;

2. Such an institution should be fully supported by the Bars and Law Societies and recognised by the Assembly of States Parties in the International Criminal Court; and

3. The FBE welcomes the institution founded in Montreal on June 15 2002.<sup>19</sup>

In 2002, the States Parties and the organs of the Court were not ready for the creation of an ICC bar. It was impossible to obtain the formal recognition the ICB wanted and the Court started its existence without a bar or any other form of an association of Defence counsels.

After failing to obtain recognition as the Court's bar in the first years after its founding, the ICB was partly marginalized by the organization of the Defence adopted by the Registry of the Court. In particular, the establishment of the list of counsel, the content of which was, at first, confidential, has not allowed to unify the Defence. The lawyers who came to be registered on the list of counsel all over the world were not all aware of the existence of the ICB, which, being unable to know the names of the lawyers on the list, was not able to make itself known. Various difficulties followed, with the ICB speaking on behalf of the Defence, seeking to promote the general interests of the profession before the Court, while the lawyers on the list of counsels, who were not members of the ICB, did not recognize themselves in its positions. This created a gap that widened as the number of lawyers on the list of counsel increased and whose voices, multiplying without consultation, became too many to be audible. This situation has forged the perception that the Registry was seeking to divide the Defence so as not to lose the powers conferred to it by the relevant texts.

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<sup>19</sup> European Bars Federation, "Resolution about international justice court", June 2002.

### 18.2.3. A Solution Emerges

Despite the tools available and the attempt of the ICB, no bar at the ICC had been established after more than ten years. The lobbying undertaken, especially by the ICB, had however, in the authors' opinion, contributed to some progress in the direction of a bar in the general opinion.

At the ICB General Assembly of December 2012, the authors could observe that the terms of the equation began to change. On the initiative of the author of this chapter, the ICB considered that the time of its recognition had passed and that it was necessary to work for the creation of a bar association specific to the Court, on new foundations. In particular, it was necessary to identify what could be understood as a bar in the very particular context of the ICC. Indeed, each of the bars represented in the organs of the ICB, from all continents, had its history, its legal basis, its field of competence and its experience. It did not make much more sense to duplicate for the Court the institutional scheme of the Paris Bar than that of the Bar of Costa Rica, Canada, Mali, Malaysia or any other. Moreover, it was clear that missions, which, in some countries but not everywhere, fall within the competence of the bar, in particular disciplinary control and legal aid, were already subject to regulations before the ICC. Neither was it possible to copy the solution chosen by the Extraordinary Chambers in the Courts of Cambodia ('ECCC') as their solution was that the lawyers intervening before those chambers were submitted to the Cambodian law.<sup>20</sup> The Office of the Principal Defender at the Special Court for Sierra Leone was not a satisfying source of inspiration either, given that. Firstly, it is similar to the system of the Office of Public Counsel for the Defence ('OPCD'). Secondly it has encountered sustained critics, amongst which one by an author that described it as a naked defence office due to the fact that it had been given an unclear mandate, was poorly staffed, and was neglected by the Registry.<sup>21</sup> It was therefore necessary to find a formula that could serve the interests of the profession and the proper functioning of justice, while respecting the existing legal and regulatory framework. The most inspiring example came of course with the solution found at the Special Tribunal for Leb-

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<sup>20</sup> United Nations General Assembly, Khmer Rouge trials, UN Doc. A/RES/57/228 B, 22 May 2003 (<http://www.legal-tools.org/doc/533d2a/>).

<sup>21</sup> Ashraph, Sareta, "The Naked Defense Office: How an Unclear Mandate, Poor Staffing, and Registry Disinterest Stripped the Office of the Principal Defender", in Charles Jalloh (ed.), *The Sierra Leone Special Court and its Legacy: The Impact for Africa and International Criminal Law*, Cambridge University Press, 2013, pp. 550–571.

anon, whose Defence Office was, however, a fully-fledged organ of the Court, implemented from the outset.<sup>22</sup> This solution did thus not appear viable for the ICC given the cumbersome nature of the procedure to modify the Rome Statute and insufficient willingness on the part of the States Parties to implement a defence organ on par with the other organs.

It was time to understand that the absence of a bar was not only due to a lack of will of the Court Registry, but perhaps more so to the inability of the Defence to come together to speak with one voice, in the common interest. The ICB has therefore embarked on a rallying of the Defence, making the effort to contact each lawyer, one by one, in order to determine together the fundamental principles that could allow the creation of a bar. This might remind one of the fundamentals of the self-organization of the legal profession which led to the emergence of bars in Europe.<sup>23</sup> It was during the March 2012 symposium organized in Geneva to mark the tenth anniversary of the Court, with the participation of ICB organs, lawyers on the List of Counsels and in the presence of the Head of all the Court's organs, as well as the President of the ASP, then Ambassador Tina Intelman from Estonia, that it was made possible to change the settings in relation to the creation of an ICC bar association.

At the next session of the ASP, the Committee on Budget and Finance submitted a report to the Assembly on the organizational structure of the Court, in which it started with the recommendation that:

the Court undertake a thorough evaluation/review of its organizational structure with a view to streamlining functions, processes and corresponding structures, reducing spans of control where necessary, identifying responsibilities that could be delegated and rationalizing lines of reporting. Furthermore, the Committee recommended that the Court present a report on the complete structure of the Court, and not at the position level, for its eighteenth session, with a view to identifying clear managerial and reporting lines, as well as any needs, current or future, to modify the Court's structure and post requirements.<sup>24</sup>

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<sup>22</sup> See Resolution 1757 (2007), UN Doc. S/RES/1757 (2007), 30 May 2007, Article 2, p. 7 (<http://www.legal-tools.org/doc/c8fb1a/>).

<sup>23</sup> Philippe Currat and Brice Van Erps, *La défense devant les juridictions pénales internationales*, Editions Probare, 2019, p. 295–307.

<sup>24</sup> See ICC ASP, “Report of the Court on its organizational structure”, 4 May 2012, ICC-ASP/11/6, p. 1, para. 2.

With the election of Herman von Hebel as Registrar of the Court, on 8 March 2013,<sup>25</sup> a wider movement of reorganization of the Registry was proposed and implemented, albeit in a controversial manner.<sup>26</sup> In October 2014, the Registrar presented to the ASP a draft proposal for the establishment of a Defence Office and a Victims' Office ('Draft Basic Outline of Proposals to Establish Defence and Victims Offices').<sup>27</sup> This document provided an overview of the vision, reasons and ideas behind these proposals and was intended to serve as a basis for discussions with relevant stakeholders. In the months following the presentation of this document, the Registrar's proposals received wide attention from lawyers, experts, representatives of NGOs or States.

During the December 2014 ASP, in New York, the Registrar proposed the authors to attend the next ICB General Assembly, to be held in Barcelona in January 2015, and to take that opportunity to have an in-depth discussion with the legal profession on the place and the role of the existing bodies, namely the OPCD and the Office of Public Counsel for Victims ('OPCV'), or the Counsel Support Section ('CSS') and on the creation of a bar or other form of association of lawyers. The Barcelona discussions were intense and the Registrar was certainly not on conquered ground. They were necessary and opened up unprecedented perspectives in the history of the Court. At the end of its General Assembly, on 30 January 2015, the ICB adopted a resolution giving a mandate to its Executive Committee, to work on the creation of an independent bar for the ICC.<sup>28</sup> This resolution

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<sup>25</sup> ICC, "ICC's new Registrar Herman von Hebel takes oath", 18 April 2012, ICC-CPI-20120418-PR899.

<sup>26</sup> Various organisations have published critical analyses, notably on the legal representation of victims, see, for example, the FIDH, "Newsletter", 18 November 2014". See also Hélène Calame and Joël Hubrecht, "Projet de révision du Greffe de la CPI: une réforme controversée", Institut des Hautes Etudes sur la Justice, March 2015. This reorganisation of the Registry has been the subject of various reports, including to the Assembly of States Parties, see ICC ASP, "Audit report of the ReVision project of the International Criminal Court's Registry", 9 November 2016, ICC-ASP/15/27 ('Audit Report of the ReVision Project') (<http://www.legal-tools.org/doc/80a7a5/>); see also ICC ASP, "ReVision Report: Secretariat of the Assembly of States Parties", 13 December 2017, ICC-ASP/16/INF.3 (<http://www.legal-tools.org/doc/372360/>).

<sup>27</sup> ICC Registry, "Comprehensive Report on the Reorganisation of the Registry of the International Criminal Court", 31 August 2016, pp. 131–132, para. 411 ('Comprehensive Report on the Reorganisation of the Registry') (<http://www.legal-tools.org/doc/cbc6cc/>).

<sup>28</sup> ICB General Assembly, "Résolution sur la proposition de création d'un Barreau des avocats admis à représenter devant la CPI", 30 January 2015 (unpublished document, the text of the resolution is on file with the authors).

specifically stated that the bar should ensure the independence and the representation of the legal profession and of all counsel before the ICC, be in charge of enforcing ethical rules applicable to counsel and of the discipline of counsel, that counsel practising before the ICC have to be members of the bar, which was to be created for the ICC only. The draft document creating the bar was designed to be submitted for adoption to the fourteenth Session of the ASP.

If there was clearly no debate on the first point regarding the necessity of ensuring the independence of the legal profession, the question to determine if an ICC bar association must be for all counsel or only for those who are intervening in the defence of an accused, at the exclusion of the legal representatives of victims, has always been a matter of discussion. Such was already the case at the creation of the ICB and was, once again, the case during the Founding Congress of the ICCBA. The answer has always been the same, to consider that all counsel being subjected to the same Code of Professional Conduct for Counsel in the exercise of the same profession before the Court, a bar should be for all of them. The second point, regarding the enforcement of ethical rules applicable to counsel and of the discipline of counsel, was to recall the importance of these questions and the role a bar could play in improving the professional conduct of counsel. The third point was not so much discussed during the 2015 ICB General Assembly although it is of paramount importance. By stating so clearly that counsel practising before the ICC have to be members of the Bar, it was meant that it would be mandatory for a list counsel to join the Bar, to be authorized to practice before the ICC. In stating that the Bar is created for the ICC, the ICB considered essential to have a bar specifically dedicated to that Court and not one for all the international or internationalized courts or tribunals. The specificity of the ICC, as a permanent and potentially universal Court, entails the specificity of the missions of that Bar. The last point, providing that the draft document creating the Bar was to be submitted for adoption to the ASP, underlines the specificity of the ICC regarding the fundamental role of the States in the functioning of the Court. It must be recalled that not only the Rome Statute and the RPE but also the Code of Professional Conduct for Counsel have been adopted by the ASP. The adoption of the text by the States Parties was seen as necessary not only to guarantee the independence of the bar association, but also to ensure the level of formal recognition appropriate to allow it to act as an in-



terlocutor with both States Parties and other judicial organs of the Court in the fulfilment of its mission.

Most importantly, a conference of experts – amongst which the author, in his capacity as General Secretary of the ICB, was convened by the Registry at the seat of the Court in March 2015. It was then important to prepare this meeting by assembling all the major figures of the Defence before the ICC and to present a unique and common voice during the discussion with the Registry. Among many others, those who had also been working on a project of creating a bar or an association of counsel for the ICC, namely Raymond Brown, Jens Dieckmann, Michael Karnavas and Geoff Roberts, took part. The two Co-Presidents of the ICB, Roxane Helme QC and David Levy, one of the Vice-Presidents, Kenneth Gallant, and Philippe Currat, ICB General Secretary, spent the weeks before the meeting calling the other lawyers one by one. If it was certainly not easy to convince all of them to meet the day before the opening of the expert meeting, a Sunday night, it has finally been possible to achieve something that appears, looking back to that date, historical. It was the first time that the main actors of the Defence before the ICC took the opportunity to discuss together the best way to create, finally, a bar. It was particularly important that such discussions may have been conducted at a moment that allowed the Defence to take part in the discussion opened by the Registrar around his ReVision project.<sup>29</sup> In the weeks leading up to the expert meeting, intense discussions took place on issues such as whether a bar should only be open to defence lawyers or also to representatives of the victims, should be limited to counselling or open to members of their teams, should be limited to counsel pleading before the ICC or open to all practitioners before all international criminal jurisdictions, if affiliation to this bar was to be on a compulsory or voluntary basis, if the members were to pay dues and if that bar was to be registered, as to its legal form, under Dutch law, because of the seat of the Court in the Netherlands.

All the participants to that preparatory work, amongst them Philippe Currat, agreed on the following fundamental principles: (i) the organization set up will be a bar and not an association of counsel; (ii) the Bar will be for all counsel at the Court, both defence and victims; (iii) membership is open to all counsel, co-counsel, legal assistants, case managers, who are

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<sup>29</sup> Comprehensive Report on the Reorganisation of the Registry, Foreword by the Registrar, pp. ix-x, see above note 27. The authors of these pages were among the experts.

members of their national bars; (iv) membership is mandatory for list counsel; (v) it is first of all an ICC Bar, and is open to members from the United Nations criminal courts and tribunals; (vi) it will have at least a Defence and a Victims section; (vii) the Bar must be represented in every Committee or Working Group dealing with amendments to legal texts, rules and regulations and making of new sets of rules and regulations; (viii) it provides services to members (for example, support in day to day dealing with issues on the Court; legal advice if needed by counsel), perhaps maintaining a list of counsel; and (ix) the Bar will finance itself first of all with member fees/dues but may accept outside funding (such as from the ASP) so long as its principles are not compromised.

During that experts meeting, the common position expressed by the Defence was strongly perceived not only by the Registry, but also by all the other experts and NGO representatives who attended the meeting. It is fair to say that such a common position was not expected and provoked an important change in the way the ReVision project was to be completed. When, at the end of the meeting, it was decided to create a drafting committee for preparing the Statute of an ICC bar association, the composition of it was decided by consensus. Only the involvement of the OPCD and OPCV Principal Counsel has raised some controversy as to their independence while they belong to the staff of the Court and their offices are administratively attached to the Registry. It was considered that their expertise in the functioning of the Court was of particular importance for the committee and thus justified their participation.

The drafting committee was comprised of 11 persons, namely Geoff Roberts (counsel, IBA member), Raymond Brown (counsel), Ken Gallant and David Levy (representing ICB), Michael Karnavas (counsel), Jens Dieckmann (counsel), Emmanuel Altit (Defence counsel), Luc Walley (victims counsel), Ghislain Mabanga (witness counsel), Xavier-Jean Keïta (OPCD), and Paolina Massidda (OPCV). This committee decided to work speedily and to be done with its mission by May 2015. It was also decided that the committee shall circulate among its members the three to four drafts that were on the table, will send its common draft for review and comments to ICC list counsel and to international associations of lawyers, will reconvene in order to take into account the comments, and will draft a final document that will be sent to the Registrar and circulated to the legal profession.

In its report of August 2016, the Registry notes:

This consultation process led to the holding in March 2015 of the two days of an expert conference bringing together about 70 experts with extensive experience in the functioning of the Court in the areas of defence and victims' participation in the proceedings. Many Defence Counsels and victims' representatives in cases heard by the Court attended, as did a large number of representatives of NGOs and individual experts. This consultation allowed the Registrar to reconsider some of the original ideas and, as a consequence, led to the initial proposals being reviewed and developed further.<sup>30</sup>

In a November 2016 Report, the Registrar explained in particular in relation to the Defence:

The project team strived to merge the two sections in charge of defence (the Office of Public Counsel for Defence, OPCD, and the Counsel Support Section, CSS). A similar project provided for the merger of two sections in charge of assistance for victims (the Office of Public Counsel for Victims, and the Victims Participation and Reparations Section). The project led to significant preparatory work and the drawing up of recommendations as numerous as in the case of other sections but was ultimately not adopted as it would have implied a change to the Regulations of the Court. Judges had some general discussions on this potential merger in 2014 and 2015, which demonstrated that there was a division among Judges on the matter. As a consequence, the matter was not developed further, no concrete proposed amendments to the Regulations were ever submitted and this aspect of ReVision was abandoned.<sup>31</sup>

Even if it was not said clearly by the Registry, it is possible to consider the abandonment of that part of the ReVision project also as a consequence of the March 2015 experts meeting and of the unity shown by the legal profession. The common front offered by the Defence had thus had a real and positive influence on the course of the reorganization process of the Registry.

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<sup>30</sup> *Ibid.*, p. 132, para. 413.

<sup>31</sup> Audit Report of the ReVision Project, p. 11, paras. 69–70, see above note 26.

### 18.3. The Present of the ICC: A Bar Achieved

The work of the drafting committee was a strong starting point but was not enough in itself. It was necessary, in parallel to its work, to build as broad support as possible around the concretization of a bar, on the part of States, organs of the Court and local or national bar associations as international associations of lawyers.

With regard to States Parties, David Levy and Philippe Currat conducted extensive diplomatic consultations to convey to the various delegations the importance of establishing a bar association to build and strengthen the credibility of the Court. It is important to say that the position of the States, globally, had profoundly evolved since the opening of the *Bemba et al.* case<sup>32</sup> for offences against the administration of justice in connection with the case of *The Prosecutor v. Jean-Pierre Bemba Gombo*. The arrest, on 20 November 2013, of Aimé Kilolo Masemba, principal Defence Counsel of Jean-Pierre Bemba Gombo, and Jean-Jacques Magenda Kabongo, his Defence case manager, together with one of the Defence witnesses and a member of Parliament in the Democratic Republic of the Congo and their subsequent transfer to the ICC Detention Centre, provoked an unprecedented judicial seism. If it was possible and admissible for the Prosecutor to monitor the Defence Counsel, members of his defence team and the accused person during the trial phase against him, to request and obtain the arrest of a Defence Counsel in the middle of the presentation of the defence case to the Trial Chamber, it was certainly necessary to have a bar to discuss with in order to ensure the protection of the rights of the Defence and, in particular, the protection of the confidentiality and the professional secrecy, during the investigative phase on alleged offenses against the administration of justice. The consequences on the Court's image, its integrity, on the image of the legal profession and its integrity as well as its ability to present an effective defence in accordance with the applicable professional rules, were devastating. It was certainly a turning point for the States Parties as well as for the organs of the Court and also for the Defence Counsel. The Court had no interlocutor with whom to discuss, lawyers had no institution to turn to for advice and protection and the States Parties had been taken by surprise.

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<sup>32</sup> ICC, *Prosecutor v. Jean-Pierre Bemba Gombo et al.*, Pre-Trial Chamber II, Warrant of arrest for Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 20 November 2013, ICC-01/05-01/13-1-tENG (<http://www.legal-tools.org/doc/4b1297/>).

The election of the then Minister of Justice of Senegal Sidiki Kaba as President of the ASP, in December 2014, was of particular importance. His career as well as his extended experience as Defence counsel made him the perfect interlocutor to understand the necessity of the creation of an ICC bar association. It was particularly with his Vice-President, Ambassador Álvaro Moerzinger (Uruguay), who was based in The Hague, that we discussed the considerations that could lead the ASP to agree to support the process of establishing a bar and then to recognize it formally.

These diplomatic consultations with States Parties would not have been enough without parallel discussions with the organs of the Court. The judges, and in particular the Presidency, have shown continued support for the idea of finally establishing a bar association for the ICC. The then President of the Court, Judge Silvia Fernández de Gurmendi, spared no effort to ensure that this second opportunity to create a bar for the Court does not fail as did the first attempt in 2002. The Prosecutor Fatou Bensouda, although perhaps less directly concerned with the creation of a bar, has always shown support for the founding process. The then Registrar, Herman von Hebel, was much more directly involved. During all the preparatory work, we regularly heard informal reports from lawyers based on personal interaction that the Registrar could have a hidden agenda and that his main purpose was to get his ReVision project through, not the creation of a bar. Some did not hesitate to say that the Registrar was instrumental in the discussions in order to pass the suppression of the two OPCD and OPCV and that, ultimately, we would be the dupes of an announced disaster. We were obviously aware that the institutionalization of defense through the establishment of a bar was only one part of a much broader reorganization of the Registry. In fact, we had to be careful not to interfere with the parts of the ReVision project that did not concern the defense. But we also had to be vigilant, especially at certain particularly tense moments of the controversy provoked by the Registrar's actual or supposed intentions in his reorganization desires, not to tie the fate of the Bar to that of the ReVision project. It was actually in an exercise of great acrobatics of multilateral diplomacy that we indulged ourselves. It was done so with all the conviction that we generally put in the exercise of our profession, in the same terms as those of the Basic Principles on the Role of Lawyers.

Last, but not least, we had to deal with the expectations of the representatives of our own profession, among them some particularly powerful bars, like the one of Paris, or some international associations of lawyers. In

fact, we were particularly aware of the difficulties that may exist in trying to work with lawyers. As lawyers ourselves, we knew that the only chance for success lay in always placing the debates on the general principles of the practice of our profession. Some lawyers wanted to reserve the possibility of being a member of the bar of the Court to only the very few of us who were actually pleading in a defense team. They would have formed a very small cartel to defend the interests of its members to ensure them the monopoly of representation before the ICC. The ICB has always responded by highlighting the collective nature of the work in progress and its efforts in ensuring the success of the collective project, beyond the questions of the people involved. At no other time since their adoption in 1990 have the Basic Principles on the Role of Lawyers been as influential as during this period.

It was on this basis that it was finally possible to gather at the seat of the Court, on 30 June 2016, the founding congress of the ICCBA, which adopted its statutes. In the few days before, it was still necessary to face the last jolts of dissatisfied colleagues. Some have tried to suggest that the current process lacked independence from the Registrar and that it was therefore not possible for lawyers to play that game. Oddly enough, they appealed to the President of the Court to intervene, but apparently did not perceive that it could not be more legitimate to place themselves under the control of the Presidency of the Court than that of the Registry. History ran its course and could not be stopped. The common front offered by the Defence, which had been so long and difficult to build, fortunately held against the last assaults which were delivered to it.

During the founding congress of the ICCBA, some amendments were proposed to the draft Statutes submitted to the attendees. The proposed rule of requiring a qualified majority of two-thirds of the votes for any amendment to the Statute was not discussed or proposed itself for amendment. The question of the possibilities for Court staff to be members of the Bar was particularly discussed. It was, for some of us, a question of principle closely linked to the independence of the Bar. For the others, the lawyers working in the OPCD and OPCV were counsel like the others, their names appearing on the list of counsels allowed to plead before the Court and being subjected, like all others, to the same code of professional conduct in the exercise of their profession. After a very intense debate, the result of the vote was one of those that does not allow to definitively settle the controversy. The proposal to deny Court staff membership to the Bar



was accepted by just under 60 percent of the votes. This is a strong majority, but below the required two-thirds majority for amendments to the Statute.

Another point that was discussed at length was the funding of the Bar. In any bar, lawyers pay fees or dues that can sometimes be high. However, it was obvious to everyone that out of the 600 or so names on the list of counsels, only a tiny minority would actually be called to take part in a defence team. Was it therefore legitimate to ask those who will never work in the Court to pay dues to this bar? Should there be different amounts for members who are active in a defence or victim representation team and for those who are not? A proposal was made to deduct a percentage of the legal aid received by lawyers as a financial contribution to the Bar, but this was not supported. Of course, with these financial elements, it is the independence of the Bar that is at stake. It was inconceivable for counsel that the Bar's funding should come from the budget of the Registry or any other judicial body of the Court, as this would have been incompatible with the principle of its independence. It was not the same with funding granted by the States Parties, on a budget line independent of the ones of the other organs but it would have been necessary to count at the political level with the reluctance of the States Parties to increase their financial contributions to the functioning of the Court and it would have been necessary to find a way to compensate this new accounting line by the reduction of another one. Finally, the question was left open and the determination of the amount of the individual contributions of the members was referred to subsequent decisions of the bodies to be issued.

The first ICCBA General Assembly was held at the seat of the ICC, on 1 July 2016.<sup>33</sup> During this first assembly, the organs were elected and the membership system was established. Three forms of membership were provided for in the Constitution of the ICCBA: full membership of the ICCBA, which is open to all lawyers admitted to the ICC List of Counsel or those who are eligible to practice before the ICC as independent defence or victims counsel; associate membership, which is open to individuals who are admitted to the ICC List of Assistants or those assigned as support staff to a case at the ICC and have at least five years of relevant experience in

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<sup>33</sup> See Association du Barreau Près la Cour Pénale Internationale, "À propos" (available on its web site).

international criminal law; and affiliate membership, which is open to individuals with demonstrable experience of international criminal law.<sup>34</sup>

To complete the process, the ASP welcomed the establishment of the Court's bar association and acknowledged its existence at the 2016 session.<sup>35</sup> At the following session, on 1 November 2017, the ASP adopted a first Report on the Statutes and Activities of the ICCBA, the summary of which shows the progress made and the quality of the objective finally achieved, from the first sentence:

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. In the first 18 months of its existence, the ICCBA has developed into a fully functioning organization that has engaged with the Court, ASP and third parties to address issues of concern to the ICCBA membership and promote the ICCBA's broader goals in accordance with its mandate. The ICCBA has opened a 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 commentary and by making cost-neutral proposals for significant improvements of the current situation pending the finalization of a complete review of the Legal Aid Scheme. The ICCBA is additionally conducting an assessment of potential policy gaps at the Court, which have a direct impact on the work of Counsel and Support Staff and the security of their clients – Victims, Defendants and Witnesses – to bring these matters to the Court's attention. The ICCBA has directly, and through partners, organized a variety of substantive and skills-based trainings for Counsel and Support Staff, and is in the process of launching online training facilities, through its web site, to

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<sup>34</sup> See ICCBA, Constitution, "Membership", Part II, Article 3.

<sup>35</sup> ICC ASP, Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/15/Res.5, 24 November 2016, p. 44, para. 62 ('Resolution ICC-ASP/15/Res.5') (<http://www.legal-tools.org/doc/991a13/>).

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 appointment 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. By doing so, the ICCBA strives to become an indispensable and reliable partner of the Court and the Assembly in achieving a model of modern and transparent criminal justice by enhancing the quality of representation of Victims, Defendants and other persons.<sup>36</sup>

The ICCBA is governed by its General Assembly who elects the President, as well as fourteen members of an Executive Council.<sup>37</sup> Amongst those members of the Executive Council, an Executive Committee conducts the daily operations of the association. Standing Committees have also been set up to consider issues and propose activities and actions relevant to their particular area of focus, such as a Defence Committee, a Victims Committee and a Training Committee.<sup>38</sup> Furthermore, there are Regional and National Focal Points to conduct certain outreach activities on behalf of the ICCBA in the Focal Point's geographic area of responsibility.<sup>39</sup>

However, it is regrettable to note that, to this day, few academic papers are dedicated to the defense and the organization of the defense before the ICC. Even fewer publications and reflections can be found on the deontological and ethical principles that prevail, or should prevail, for counsel intervening at the ICC. It thus appears that in the absence of academic research, ICCBA committees will be at the forefront of useful reflections on the subject.

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<sup>36</sup> ICC ASP, "Report on the Constitution and Activities of the International Criminal Court Bar Association ("ICCBA")", 13 November 2017, ICC-ASP/16/30, p. 2 (<http://www.legal-tools.org/doc/ed3dbb/>).

<sup>37</sup> See ICCBA, Constitution, "General Assembly", Part IV, Article 8, no. 12a, see above note 34.

<sup>38</sup> See ICCBA, Constitution, "General Assembly", Part IV, Article 8, no. 12(d), (e) and (i), see above note 34.

<sup>39</sup> See ICCBA, "Governance" (available on its web site).

#### **18.4. The Future of the ICC: A Bar Improving the Legitimacy of the Court**

In its Resolution of 2017, entitled ‘Strengthening the International Criminal Court and the Assembly of States Parties’, the ASP invited the ICCBA to report on its constitution and activities, demonstrating the importance of this Bar for the consolidation of the Court and the ASP.<sup>40</sup> The Report on the Activities of the ICCBA aimed at providing the Assembly with information in response to this invitation.<sup>41</sup>

Each year since the founding of the ICCBA, the ASP has noted the importance of the work carried out by independent representative bodies of counsel or legal associations.<sup>42</sup> In 2018, the Assembly recognizes the ICCBA as an independent representative body of counsel which may be consulted by the Registrar, if appropriate, pursuant to Rule 20(3) of the RPE.<sup>43</sup> According to that rule, the ICCBA is therefore called upon to take on new responsibilities in essential areas of the Court’s activities that affect the defense and in particular regarding the functioning of the legal aid system.<sup>44</sup> Above all, it will also participate in any evolution of the Code of Professional Conduct for Counsel, adopted by the States Parties on 2 December 2005,<sup>45</sup> when there was no institutional structure bringing them together. As is the case with the bar associations in many national jurisdictions, ICCBA will thus be able to reappropriate the rules governing the practice of the profession before the ICC.

When the ASP, in 2019, requested ICCBA to report in advance to its Bureau on its constitution and activities,<sup>46</sup> it creates the conditions to establish, year by year, high-level institutional relationships that allow counsel to have direct access to States Parties and to become their privileged inter-

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<sup>40</sup> ICC ASP, Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/16/Res.6, 14 December 2017, p. 45, para. 73 (<http://www.legal-tools.org/doc/36d60d/>).

<sup>41</sup> ICC ASP, “Report on the Constitution and Activities of the International Criminal Court Bar Association (“ICCBA”)”, 28 October 2020, ICC-ASP/17/380.

<sup>42</sup> Resolution ICC-ASP/15/Res.5, p. 11, para. 82, see above note 35, or, ICC ASP, Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/18/Res.6, 6 December 2019, p. 11, para. 78 (‘Resolution ICC-ASP/18/Res.6’) (<http://www.legal-tools.org/doc/lvkj72/>).

<sup>43</sup> Resolution ICC-ASP/18/Res.6, p. 11, para. 80, see above note 42.

<sup>44</sup> ICC RPE, Rule 20(3), see above note 5.

<sup>45</sup> ICC ASP, Resolution ICC-ASP/4/Res.1, see above note 11.

<sup>46</sup> ICC ASP, Resolution ICC-ASP/15/Res.5, p. 11, para. 83, see above note 35.

locutors with respect to their activities. This is a significant step forward compared to the situation that prevailed until 2016. At that time, it was in fact the Registrar of the Court who discussed with the States Parties all issues relating to the defense and legal representation of victims. Such a situation did not allow States Parties to have first-hand information about the work of counsel, nor to give due consideration to the importance of their role in ensuring fair trials before the Court.

By recognizing the importance of the ICCBA, the ASP is finally fully implementing the recommendations adopted by the UN in the Basic Principles on the Role of Lawyers. For instance, Principle 4 states that governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms.<sup>47</sup> In the future of the ICC, the activities developed by the ICCBA in co-operation with the ASP will ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of lawyers and of human rights and fundamental freedoms recognized by national and international law.<sup>48</sup> In countries where groups, communities or regions exist whose needs for legal services are not met, which is notably the case for almost all the situation States before the ICC, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, it will now be possible for the Court to take, develop and enforce special measures to provide opportunities for candidates from these groups to enter the legal profession and ensure that they receive training appropriate to the needs of their groups.<sup>49</sup>

The recognition of the ICCBA by the States Parties also provides, in the future, an effective means of implementing the Agreement on the Privileges and Immunities of the Court, Article 18 of which aims to enable counsel to carry out their duties in complete security.<sup>50</sup> This is also an enforcement of Basic Principle 16 on the Role of Lawyers, which states that governments shall also ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or im-

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<sup>47</sup> Basic Principles on the Role of Lawyers, Principle 4, see above note 1.

<sup>48</sup> *Ibid.*, Principle 9.

<sup>49</sup> *Ibid.*, Principle 11.

<sup>50</sup> ICC, “Agreement on the Privileges and Immunities of the International Criminal Court”, 9 September 2002, ICC-ASP/1/3 (<http://www.legal-tools.org/doc/6eefbc/>). For a full analysis of the issue, see Currat and Van Erps, 2019, p. 217–293, see above note 23.

proper interference, that they are able to travel and to consult with their clients freely both within their own country and abroad, and shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.<sup>51</sup> Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.<sup>52</sup>

The ICC can now count on the co-operation of a professional association of lawyers to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.<sup>53</sup>

### 18.5. Conclusion

Thus, it has to be noted that despite the duration and importance of the preparatory work, States Parties have never shown any particular interest in institutionalizing the defense before the ICC. It was only when the Rome Statute came into force that the counsel mobilized to organize themselves. The worldwide legal profession took fourteen years to structure itself in a system that made it possible to provide the ICC with the last pillar it needed to reach the standards set forth by the Basic Principles on the Role of Lawyers. The ICCBA, by professionalizing and organizing the activity of counsel, by ensuring their independence, and justifying the privileges and immunities set forth in the ICC system through the respect of strict professional rules is therefore equipped to fulfil its role to support the Court's mission to render an international justice on the most serious crime allegations.

The way the ICCBA was finally created reminds one of the historical foundations of the creation of the bars in Europe, which was based on the self-organization of lawyers. Only the discipline lawyers impose to their peers and the support they provide each other within an independent professional association can give the legal profession the credibility it needs to fulfil its mission.

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<sup>51</sup> Basic Principles on the Role of Lawyers, Principle 16, see above note 1.

<sup>52</sup> *Ibid.*, Principle 17.

<sup>53</sup> *Ibid.*, Principle 25.



Today, and for the greatest benefit of the ICC, we can see the ICCBA as one of these professional associations of lawyers that have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, as it is stated in the last paragraph of the Preamble of the Basic Principles on the Role of Lawyers.

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