

DRAFT FOR CONSIDERATION BY CONFERENCE

FRAMEWORK CONSTITUTION OF THE INTERNATIONAL CRIMINAL BAR

PREAMBLE

APPLYING the statute of the International Criminal Court and its draft Rules of Procedure and Evidence

CONSIDERING Rule 20(3) of the draft Rules of Procedure and Evidence of the International Criminal Court

REITERATING that the independence, integrity and quality of counsel are essential to a fair trial and the effective protection of human rights and fundamental freedoms,

DRAWING on the preparatory deliberations of the Paris Conference of 6 and 7 December 2001 and The Hague Colloquium of 28 and 29 May 2002

NOW WE, THE ASSOCIATIONS OF LEGAL PRACTITIONERS, NON-GOVERNMENTAL ORGANIZATIONS AND THE INDIVIDUAL LEGAL PRACTITIONERS HERE GATHERED IN MONTREAL ON 15 JUNE 2002, RESOLVE TO CREATE AN INDEPENDENT REPRESENTATIVE BODY OF COUNSEL BEFORE THE INTERNATIONAL CRIMINAL COURT AND INDEPENDENT LEGAL ASSOCIATIONS, IN THE FOLLOWING TERMS:

PART ONE GENERAL PROVISIONS

Article 1 Definitions

The following words or acronyms shall bear the following meanings in this Constitution:

Assembly

Association

Council

Counsel/Legal practitioner

Court

Executive Committee

ICB

International Organisation

Member (and individual/ collective/ associate member)

President

Regional Organisation

Writing (includes electronic mail and facsimile transmissions)

Article 2
Name, Legal Organisation and Seat

1. The name of this association shall be the International Criminal Bar (ICB).
2. The ICB shall be established as an association pursuant to the law of the Netherlands.
3. The seat of the ICB shall be at The Hague.

Article 3
General Principles

The ICB shall be based on the following principles:

1. It shall promote and defend the role and independence of counsel for the defence and for victims before the International Criminal Court (the Court).
2. It shall promote the principle of freedom of choice of counsel.
3. It shall facilitate the work of counsel before the Court.
4. It shall promote effective communication between the organs of the Court and counsel.
5. It shall promote the acquisition of knowledge and skills of counsel before the Court.
6. It shall participate in regulating the practice of counsel before the Court.
7. It shall reflect the diversity of the legal systems and the geographical areas of the world.

8. It shall strive to promote the principle of complementarity in relation to the functions, rights and duties of national, regional and international associations of counsel.

Article 4 **Objectives, Functions and Powers**

1. The ICB shall promote and advance:

- a. Ethics for counsel and disciplinary proceedings.
- b. Professional training.
- c. The development and administration of the legal aid system of the Court.
- d. The administration of the list of legal practitioners eligible to be appointed by the Court, the development and amendment process of the Elements of Crimes, Rules of Procedure and Evidence and other relevant instruments of the Court; general support for counsel before the Court.
- e. The resolution of disputes relating to the professional conduct of counsel and their remuneration.
- f. Other matters relating to the independence and effectiveness of counsel before the Court or the principles of the ICB.

Article 5 **Membership**

1. Membership of the ICB shall be voluntary.

2. An individual who qualifies to practice before the Court may be admitted as an individual member.

3. The following may be admitted as collective members:

- a. Independent national Bars or Law Societies.
- b. Independent associations of counsel.

4. Any other association concerned with the work of the Court may be accredited as an associate member.

5. Conditions of admission or accreditation as a member or associate member shall be determined by the Council.

PART TWO
GOVERNANCE OF THE INTERNATIONAL CRIMINAL BAR

Article 6
General Assembly

1. The General Assembly shall consist of all the members of the ICB.
2. All the powers and functions of the ICB which have not been vested in the Executive Committee by law or by the articles shall be vested in the General Assembly.
3. The General Assembly shall meet in annual general meeting not later than six months of the end of the official year.
4. The annual general meeting shall inter alia:
 - a. consider the annual report and financial statements, accompanied by a report from the Executive Committee.
 - b. elect the members of the Council and the Executive Committee.
 - c. appoint the Audit Committee, the Disciplinary Committee and such other committees as it may constitute.
 - d. consider proposals of the Council, the Executive Committee or of the members, specified in the notice convening the meeting.
5. The Council or Executive Committee shall convene the meeting of the General Assembly by notice in writing (including the agenda) not less than thirty days before the date of the meeting.
6. Members may propose issues to be determined at a meeting of the General Assembly session by notice in writing by facsimile or by electronic mail to the Executive Committee at least seven working days prior to the date of the meeting.
7. A special meeting of the General Assembly shall be held as occasion may require and as the Council or the Executive Committee may decide.
8. The members of the General Assembly may request in writing a special General Assembly meeting by petition of not less than one-tenth of the members. The Executive Committee shall then be obliged to convene a special General Assembly meeting within thirty days.
9. All General Assembly meetings shall be held at The Hague.
10. Suspended members of the ICB and its Council or Executive Committee shall not be entitled to attend or vote at meetings of the General Assembly.
11. The General Assembly may make rules not inconsistent with this Constitution or the law of The Netherlands relating to the functioning of the ICB and its organs.

Article 7
Proceedings of the General Assembly

1. Meetings of the General Assembly shall be presided over by the President, and in his absence, the Deputy or Vice-president.
2. The Secretary, or another person designated by the chairperson, shall keep minutes of each meeting. The minutes shall be confirmed and signed by the chairperson and the Secretary or such other person, and shall be subject to adoption at the next meeting of the General Assembly.

Article 8
Decisions of the General Assembly

In decisions of the General Assembly:

1. Collective members of independent national Bars or Law Societies of each state shall be entitled to cast one joint vote per state.
2. Collective members which are independent associations of counsel shall be entitled to cast one vote each.
3. Individual members shall be entitled to cast one vote each.
4. Associate members shall be entitled to participate in all debates, but shall not vote, except in relation to article 9(2)(c).
5. A decision of the General Assembly shall be required to be supported by a majority of the collective members' votes referred to in article 8(1) (**alternative proposal: 'and by a majority of individual members present and voting'**).

Article 9
Elections to the Council

1. An individual member, or a representative of a collective organisation, shall be eligible for election to the Council and Executive Committee on the base of geographical representation, or as a representative of a legal system, but not on both bases.
2. Not less than two-thirds of the membership of the Council shall comprise representatives of the collective members, elected in terms of sub-article 3 below.
3. The Council shall be constituted as follows:
 - a. Three representatives elected by individual and collective members in respect of each of the continents of Africa, America, Asia, Europe and Oceania.
 - b. Two representatives elected by individual and collective members in respect of each of the following broad legal systems in which they are qualified and practise: civilian (Romano-Germanic) law; common law; Islamic law ; and other systems.

c. Three representatives elected by associate members.

Alternative proposal: France: 23 collective; 6 individual; 6 NGO

Other: 23 collective; 24 individual; 6 NGO

Further: 25 collective; 11 individual; 2 NGO; majority of each collective and individual members for a decision (numbers subject to change)

Article 10 The Council

1. The Council shall consist of the members elected as in article 9 for a period of three years.
2. The Council shall meet at least twice a year on dates to be determined by it or failing such determination, by the Executive Committee.
3. A quorum of the Council shall comprise (**X**) members.
4. The Council shall determine its own procedures for meetings.
5. The Council shall elect an Executive Committee comprising a President, Deputy-president, Vice-president, Secretary and Treasurer.
6. A majority of the collective representatives present and voting and a majority of the individual representatives present and voting shall be required for a decision of the Council.
7. Associate members of the Council may participate in discussions but shall not vote.

Article 11 The Executive Committee

1. The Executive Committee shall consist of five persons who are members of the Council and shall comprise a President, Deputy-president, Vice-president, Secretary and Treasurer, elected in terms of article 10 above.
2. A quorum of the Executive Committee shall comprise three members.
3. Decisions of the Executive Committee shall be determined by a majority of its members present.
4. The Executive Committee shall determine its own procedures for meetings.
5. The Executive Committee shall be charged with the management of the ICB, subject to the limitations of the articles and decisions of the Assembly.
6. If the membership of the Executive Committee falls below five, the Committee shall continue to be lawfully constituted. It shall, however, be obliged to convene promptly a meeting of the Council to fill the vacancy or vacancies from the Council membership.
7. The Executive Committee shall be entitled to delegate functions to special committees where required.

8. The Executive Committee shall be authorised to conclude agreements to purchase, alienate or encumber registered goods, not exceeding 50 000 Euros.

Article 12

Termination of Membership of the Executive Committee

1. A person shall be elected to the Executive Committee for a term of one year, but shall be eligible for up to two further terms of up to twelve months consecutively.
2. The Executive Committee shall compile a roster of retiring members so that a person who has been appointed in the place of a member vacating office early.
3. Members of the Executive Committee may be dismissed or suspended by the Full members of the General Assembly. If a suspension is not followed by a resolution to dismiss the member within three months, the suspensions shall be deemed to have lapsed.
4. Membership of the Executive Committee shall end upon:
 - a. death of a member;
 - b. resignation by the member; or
 - c. dismissal by the General Assembly.

Article 13

Finances

1. The official year of the ICB shall run from the first day of January up to and including the the thirty-first day of December.
2. The Executive Committee shall be obliged to keep all financial records and accounts of the ICB.
3. The financial records of the ICB shall be disclosed on an annual basis to the members and the Registrar of the Court.
4. The Executive Committee shall submit its annual report to the General Assembly within six months of the end of the official year, except where an extension is authorised by the General Assembly.
5. The Executive Committee shall submit a balance sheet and financial statements of receipts and payments providing an accurate accounting of the administration conducted during the last year.
6. The General Assembly shall annually appoint at least two persons from among the members, who are not members of the Executive Committee, to sit on an Audit Committee. The purpose of the Audit Committee shall be to examine the statement of receipts and payments of the Executive Committee and report to the general meeting.

7. The Executive Committee shall keep the records referred to in paragraphs 2 and 3 for a period of seven years.

PART THREE MATTERS OF DISCIPLINE

Article 14 Ethics and Discipline

1. The General Assembly shall adopt rules and procedures relating to ethics and discipline. **(Note: It may be necessary under Netherlands law to provide in detail here, or attach a code as an annexure)**

2. The Council may appoint a Disciplinary Committee.

PART FOUR GENERAL PROVISIONS

Article 15 Dissolution

1. The ICB may be dissolved by a resolution of the General Assembly. (The provisions of the paragraphs 1, 2 and 3 of article 5 shall apply accordingly. To be verified).

2. Any balance of funds remaining after dissolution and liquidation of assets shall be divided between members at the time when the resolution to dissolve was adopted on an equal basis, unless the resolution to dissolve provides otherwise.

Article 16 Transitional Provisions

(To be completed in compliance with Netherlands law)

Montreal, June 14, 2002