

Question 1: How do you envisage the place and role of the ICCBA and its interaction with the ICC Registry?

The ICCBA was created under the impulse given by the current Registrar. This decisive fact has provoked many criticisms among the legal profession at different levels, as there is a perception of the ICCBA being under his supervision.

This perception is much more worrying in light of the mandate of the States Parties to the Registrar, in rule 20-2, to “ensure the professional independence of defence counsel”.

The next Registrar will have the responsibility of proving to the legal world that this is not the case.

As a candidate to the position, and although I am indeed ready and open to continue the dialogue in all areas relevant for the ICCBA and its work as I believe to have proved so far, I must thus be very careful in this regard: on one side, the ICCBA is undoubtedly a major partner for the Registry and should keep this place. On the other, avoiding any perception of supervision or intromission is absolutely essential both for the principle of independence of the profession and for the consolidation of the ICCBA, not to mention the reputational risk for the Court and the Registry.

As things stand today, the Assembly of States Parties has invited the ICCBA to report “on its constitution and activities” before the next session. It is, in my opinion, in that forum where the battle for an official recognition should be fought, and several consequences might be drawn from such recognition.

Taking into consideration all elements mentioned below (question 5), the ICCBA could then be integrated in the business processes of the Registry (which also need to be properly engineered) in the extent that they affect the profession or that its opinion can be useful. To mention but a few examples of this integration, the ICCBA could intervene in the strategic planning of the Registry, in the decisions regarding their working conditions (such as the means they need to perform their duties, including the legal aid policy) and in the admission of persons to the List of Counsel.

Should the honourable judges of the Court bestow on me this responsibility and conditioned to any decision by the ASP, I would ensure that all business process owners of the Registry ask themselves the question: Is there a role that the ICCBA can play in this regard?

I also intend to strengthen the already excellent relationship the Registry (and in particular its Counsel Support Section) has with the ICCBA and its constituency, by encouraging the CSS, as the focal point with the legal profession, to find further avenues for the cooperation with the association, as it has been doing so far.

Question 2: Present your vision regarding the current legal aid scheme and its possible enhancement pursuant to the ASP request.

Any reflection in this area must take into consideration the history of the Court's legal aid system, with a first scheme based in lump-sum payments and a reform (imposed by the States parties) that increased bureaucracy and reduced remunerations. We need to be aware that the solution that would satisfy all parties affected does probably not exist, and explore the possibilities of finding a common ground for understanding.

The role of the Registry in this regard has to be one of leadership regarding the improvement of the system and one of facilitator regarding the remuneration of counsel and persons working under their authority, which should be directly taken over by the ICCBA and discussed with the Assembly of States Parties. This direct discussion should also contribute to and, at the same time, be facilitated by the recognition of the ICCBA as discussed under question 5.

Regarding the improvement of the system, I do not think I can express an opinion about the process put in place by the current Registrar, with which I have wholeheartedly cooperated in good faith and given my opinion through the appropriate internal channels. I will just say that I think that the next legal aid policy must be simpler for counsel and teams and also for the Court administration, that it should keep the flexibility that currently allows the Registrar to provide counsel with the necessary resources for an effective and efficient performance and that all actors in the legal aid system should receive a fair remuneration for their work.

Question 3A: Do you consider that there should be such a Protocol for Defence and Victims teams? If so, please briefly set out your reasons.

Each situation, each case is different from the rest. Having this as the central idea, maybe there should be a catalogue of good practices and even a model protocol, but I would very much leave room for each particular counsel for the defence or for victims to discuss the particular requirements or conditions that come together in each case, without forgetting the potential role of the relevant Chamber in this regard.

Question 3B: If you are in favour of such a Protocol, do you consider that Defence and Victims representatives (including the ICCBA) should be consulted in the drafting of the Protocol? What forms should any such consultation take? Please briefly set out your reasons for their inclusion / non-inclusion in the process.

Defence and Victims representatives should indeed be associated to the drafting of such model protocol, with the specific request of gathering the views of all legal teams before the Court, present and past. The presence of an ICCBA delegate in the drafting group would contribute to having the best possible document.

Question 4A: What, if any, should be the role of the Defence and Victims representatives in ICC Outreach activities? Please explain your position.

We cannot give a simple answer to this question. The legal profession should be associated to the ICC outreach activities in every possible manner, among other reasons to give voice to all participants in the proceedings and because they are the best ones to explain the viewpoints of their clients, but this needs to be assessed on a case-by-case basis. In the first period of an investigation, for instance, victim lawyers should be associated, but I do not find the presence of the defence crucial since there is no charged person.

In general, I would make sure that the outreach activities include this representation, either in person or via video recordings prepared beforehand. This participation would also foster the pedagogical element that outreach activities need to have by bringing lawyers closer to the population targeted by those activities.

Question 4B: Do you see a role for the ICCBA in the ICC's Outreach, and if so, what?

This question must be, again, conditioned to the scope of the recognition that the ICCBA potentially obtains from the Assembly of States Parties, but in principle it can definitely play a role as the voice of the legal profession accredited before the Court – also conditioned to the result of the process discussed under question five.

Question 5: What is your view about ICCBA membership becoming compulsory for all current ICC List Counsel and applicants to the List, as well as their Assistants? If you are in favour of this course of compulsory ICCBA membership, and you are appointed to the position of ICC Registrar, explain how you would bring this about.

The reply to this question is necessarily related to the reply given to question 1 above.

Judging from my conversations with persons on the list of counsel, I can see several positions among those persons on the list of counsel who have not joined the ICCBA. Some of them do not agree with the form of the creation, others with the procedure, others that see it as a tool to create a “closed market” of lawyers before the Court and finally there is a group of people who do not want to pay in order to belong to such an association.

Recognition by the Assembly of States Parties might give the Court the lever to make the ICCBA membership compulsory for every person on the List of Counsel. This compulsory membership does not, however, necessarily mean compulsory payment.

It also has to be borne in mind that the legal texts of the Court do not establish such a condition to be on the list of counsel: it would thus be necessary to proceed to an amendment either of the Rules of Procedure and Evidence or the Regulations of the Court to include such an obligation.

Moreover, for the Registry, a wide representation of countries in the List of Counsel is very important, in particular due to the heterogeneity of the requests for counsel. It is very important that lawyers from every corner of the world can intervene to assist persons who are entitled to such assistance under the Statute and the Rules, even if the

possibilities of an appointment can be, sometimes, remote. And persons who cannot see appointments in the horizon are, understandably, reluctant to invest money in the ICCBA. Not to speak about the group who see it as a way to create a “closed market”.

In these circumstances, the ICCBA needs to be creative. Without excluding any possibility beforehand, I will (either if I am elected Registrar or otherwise) be willing to brainstorm about the possibilities of addressing the different interests at stake, by proposing formulas such as different contributions required for active and inactive members, the direct debit of a discreet percentage of fees perceived from the Court, institutional support from the Court before potential sponsors or backers, etc.

Question 6: Do you believe the ICCBA should be provided with permanent office space at the ICC Permanent Premises? Please briefly state the reasons for your position. If your answer is in the affirmative, presuming there is limited office space available within the ICC Permanent Premises, what level of priority would you attach to providing the ICCBA with its own office space and what types of measures would you be ready to take to speed up the process of assigning office space to the ICCBA?

This is a very pertinent question indeed, and one that is currently being dealt with within the Registry, so I beg your indulgence if I am not too specific and stay in the level of principles.

Once again, the question of space will in the end be linked to the potential recognition by the Assembly of States Parties of the ICCBA. Assigning office space to a non-recognized ICCBA might be, in a context of scarcity of available space, a precedent for other associations of lawyers that might feel discriminated.

Such space allocation might also be misinterpreted in the context of the criticisms that I have mentioned in my previous replies and, nevertheless, it is evident that, as the association grows up, it needs some kind of physical space if only to ensure that the archives of the association can be kept.

I would thus be inclined to be pragmatic and consider the provisional allocation, until the ASP takes any decision, of office space in the form of one or two offices with a total of two to six workstations, besides the possibility of booking flex offices,

meeting rooms and conference facilities on an equal footing to the rest of the Court. The final formula can only be decided after a careful study of the possibilities at hand in the current premises.

With the perspective that only time can give, we can further assess the needs and possibilities at stake and reconsider the allocation of space to the ICCBA.