

## Annex IV

### **Statement of the Registrar of the International Criminal Court at the 3rd meeting of the Assembly, on 10 September 2003**

1. The Court is strongly convinced that, without a defence worthy of the name, a fair trial is not possible. After the judges and the Prosecutor, the defence is the third pillar of a court of justice.
2. Under the provisional Rules of Procedure, it is for the Registrar to organize the work 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” (rule 20). The Registry is, moreover, the only organ of the court which cannot encounter any conflict of interest in addressing these subjects.
3. From the outset, therefore, first in my capacity as Director of Common Services, and now as Registrar, I have endeavoured, together with my staff, to develop this aspect of the Court.
4. How, therefore, can we design an organization capable of producing a quality defence? What does this mean in terms of the means needed to organize the Registry, and of the financial means to be made available to the defence?
5. I would like to tell you this morning, first, about the areas in which our work on the defence structure has developed and then about the working modalities we have chosen.

#### **1. Areas**

6. We had to begin by working on some very practical elements.
7. First, it was necessary to anticipate the working conditions of the Court’s defence counsel and counsel representing victims in the context of the building currently made available to us by the host country, such as:
  - problems of access by counsel:
    - to the Court and their movement within the building in terms of the security problems that arise
    - to the library
    - to the cafeteria
  - problems concerning the type of premises needed for the practice of their profession:
  - etc. ...
8. However, the working conditions of counsel also include their ease of access to documents used in the trial and to information on the status of proceedings when they remain abroad. How can we facilitate, for example, the transmission of what can amount to several million document pages? How can we organize hearings in the form of video conferences in order to avoid making people come to the Court for a hearing lasting only one morning?

9. Beyond that, we have more important and urgent issues to resolve.

10. Such issues concern the preparation of a draft Code of Professional Conduct which the Registrar is to propose to the President of the Court for submission to the Assembly for consideration (rule 8). The Registrar shall also propose to the judges the criteria and procedures for assignment of legal assistance, for inclusion in the Regulations (rule 21). Finally, it shall be necessary to determine the criteria for inclusion of Counsel in the list of assigned defence counsel.

11. Although these are the most urgent issues, this is only the beginning of a lengthy task aimed at providing the International Criminal Court with a defence structure worthy of the name.

12. In the months and years to come the urgent subjects I have mentioned will be followed by many others. These include the design of the Court's permanent buildings and the definition of equality of arms between the prosecution and the defence, a very complex concept that cannot be reduced to have mathematical sums and which will need intensive work by all of us together.

## **2. Method used**

13. As in all areas, we were determined not to take any positions until we had held discussions with the lawyers. Their expertise is essential to enable the Court to take the most appropriate decisions.

14. Our determination is strengthened by the fact that, in this area, the Provisional Rules of Procedure logically provide that 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" (rule 20 (3)).

15. With regard to working conditions, in November 2002 we engaged contacts with lawyers, especially those who plead or have pleaded before international criminal courts, to identify any difficulties that might arise. We have drawn the appropriate conclusions as regards the Court's organization. We must continue to work on this subject to improve the Court's reception of defence counsel and counsel representing victims in the context of existing constraints.

16. Concerning the remaining three subjects, we held numerous consultations.

17. In January 2002 we asked 10 or so international associations their opinion on the preparation of the code of conduct for counsel and on issues relating to legal aid. We received two draft codes of conduct sent by the International Bar Association and the International Criminal Bar Association respectively and also received documents through other associations (UIBA, European criminal bar). With these documents in mind we began to prepare a draft that was submitted to the judges at their plenary session in June for a first informal consultation. Following those discussions, in July 2002 we sent a questionnaire addressing all of these issues to 60 experts representing 25 different nationalities and belonging to different legal traditions. The closing date for submission of experts' opinions has been set at 15 September. A document will be drafted reproducing all the replies, to be discussed at The Hague during the two days of consultations which the experts will hold on these issues. The judges will have these drafts before them at their November

session. The final version of the draft code of conduct for counsel will be submitted for discussion by the Assembly at its next meeting.

18. We shall obviously continue to work closely with the counsel and with existing associations or those specially established for the needs of the International Criminal Court, provided they contain both the necessary geographic representation for a universal court and representation of the different legal systems, as does the International Criminal Bar Association, for example.

19. In this same spirit I plan to establish an advisory body, composed of high-ranking individuals recognized for their expertise in this area, which I will convene semi-annually and whose goal will be to provide me with advice to enable me to carry out the important mission entrusted to me in the resolutions adopted by the Assembly.

20. I thank you and remain available for any questions you may wish to ask me.