



Proposed Amendments to the ICCBA Constitution

30 June 2023

At the January 2023 meeting, the ICCBA Executive Committee (“EC”) nominated a working group to review the Constitution to determine what measures could be taken to improve the internal functioning of the ICCBA. The group met on four occasions – 13 January, 8 February, and 8 March, and 8 May – and collaborated over emails to present the following amendments to the ICCBA President and EC. Following the EC meeting of May, the Working Group addressed and amended the proposed amendments based on both oral feedback at the meeting and written feedback received thereafter. At the final presentation and discussion held at the EC meeting of 13 June, the EC decided to go forward with allowing the following proposed amendments to be put to the General Assembly for a vote with nearly all of the proposed amendments receiving no expressed concern. Regarding Amendment II.1, it is noted that two (of 15) members of the EC opposed going forward with this specific amendment given the loss of a number of elected posts. However, the vast majority of the EC found that the amendments would pave the way for greater visibility on dedicated issues, flexibility to address the unique needs of the ICCBA, and would capitalize on the greater number of ICCBA members each year through ability to include different members in working groups on specific issues, rather than relying on standing committees for the broader areas of ‘defence’ and ‘victim’ issues.

Overall, it is important to understand the impetus for these proposals. The entire exercise was undertaken with a view to reviewing the ICCBA Constitution to ensuring greater definition of roles and powers within the organisation, predictability for the membership, and streamlined core business. Importantly, they were made with the benefit of hindsight and the ability to see how the ICCBA’s core business has developed from idea into day-to-day operation and growth. These amendments, therefore, are designed to create more flexibility in addressing arising needs and ensuring meaningful work for all standing constitutional committees, as well as those newly designated focal points and working groups that have been recently created or are in conceptual phases.¹ In particular, over the last several years, there has been a challenge to get enough candidates to run to fill even the requisite number of slots for all Constitutional Committees, presumably due to the scope of work often overlapping with other committees and/or working groups. The proposed amendments are also presented with a view to addressing concern as to the overlap in Committee mandates and duplication of work, and the risk that this duplication may cause conflicting or contradicting steps being taken between committees. The Constitutional Committees that remain would highlight core bar functions of training and professional standards, and also ensure essential reflection of the counsel support staff with dedicated committee.

¹ In addition to the proposed amendments, the Working Group has also identified core internal directives that could be reviewed in the coming months as well, including the *ICCBA Internal Directive on the Work of the Committees*. Such concomitant amendments to Internal Directives can be presented in future ICCBA EC meetings.

All of the amendments are reflective of the actual functioning of the ICCBA, made to address gaps and overlaps in the committee work, and provide more focused and meaningful mandates to those giving over their precious time to serve the ICCBA. In sum, these amendments should make the Bar move faster and more efficiently and with a view to providing more for its members.

Therefore, the amendments proposed at this time, as endorsed by the majority of the Executive Council, are as follows:

Proposed Amendments to the ICCBA Constitution

Amendment Proposed	Current Provision	New or Amended provision	Reason for Amendment
<p><u>Amendment I</u> Addition of explicit terms of Working Groups and Focal Points</p>	<p>Article 10 Duties</p> <p>4. When the Executive Council deems it necessary, it has the power to decide on its own initiative to create special <i>ad hoc</i> committees or appoint special representatives and to define their powers for the purposes of assisting in the accomplishments of its duties, especially in matters related to the ASP. <i>Ad hoc</i> committees, or special representatives shall work pursuant to the directives of the Executive Council and shall report on their activities to the General Assembly.</p>	<p>Article 10 Duties</p> <p>4. When the Executive Council deems it necessary, it has the power to decide on its own initiative to create special <i>ad hoc</i> committees or working groups and to define their powers for the purposes of assisting in the accomplishments of its duties, especially in matters related to the ASP. <i>Ad hoc</i> committees, or working groups, shall work pursuant to the directives of the Executive Council and shall report on their activities to the General Assembly.</p> <p>[new paragraphs]</p> <p>[5. The Executive Council also has the power to appoint Focal Points to assist in the work of the ICCBA with regard to specific issues or geographical region coordination. Any named ICCBA Focal Point will be made known to the membership and will retain</p>	<p>With proliferation of use of Working Groups and Focal Points, it has been unclear how they fit into the ICCBA framework. This amendment clarifies the term of the mandates of the Working Groups and Focal Points for the EC and those serving in these roles. This would allow for regular review by the EC to adapt to the current needs of the Association and address the matter of Working Groups or Focal Points that have lay fallow. The amendment would also require the EC to contemplate if any such separate Working Groups or Focal Points are necessary to address distinct Defence or Victim positions not already addressed within the EC mandate, or which would benefit from being addressed by a separately appointed Working Group.</p>

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		<p>such post for a period of time as designated by the Executive Council or, at latest, until the next regular General Assembly. The Executive Council shall review and renew or amend any such Focal Points on an annual basis.</p> <p>6. The Executive Council shall take into consideration the specific interests of defence and of victims before the Court and assign designated working groups or focal points for each separately where necessary to fully address all matters affecting these interests as not addressed by Constitutional committees.]</p>	
<p>Amendment II.1 Addressing Defence & Victims Issues through the Constitutionally-mandated Vice Presidents and in issues-based working groups</p>	<p>PART X: DEFENCE COMMITTEE</p> <p>Article 21: Composition The Defence Committee is comprised of seven Full Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional consecutive terms. One of the seven Defence Committee Members shall be designated as chair by the other</p>	<p>PART X: DEFENCE COMMITTEE [Struck]</p> <p>PART XI: VICTIMS COMMITTEE [Struck]</p> <p>[Also struck references to DC/VC – Article 4.1.e/f; 5.3.c/d and k; 8.12.d/e]</p>	<p>The Working Group addressed the noticeable dilemma whereby the mandates of the Defence and Victims Committees overlap with the mandate and work conducted by the EC – including the EC’s Vice Presidents of Defence and Victims, and other members of the EC holding notable expertise in these issues. In order to address this duplication, the Working Group’s proposal reflects that where issues arise for Defence or Victims, they are already expertly handled by the Vice President of either and other</p>

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	<p>Members. The Chair of the Defence Committee reports to the Executive Council. At least three Members must be engaged in cases before the ICC or must have been engaged in a case during the three years preceding the elections.</p>		<p>members of the EC, and can further benefit from calling upon the membership at large for input or leading dedicated focal points and working groups. As with the existing framework, this would still allow for wider input of either 'Defence' or 'Victim' practitioners on issues that arise in survey of the general membership or those with specialised expertise. However, it would centralise a focal point for contact both by the internal membership and external partners. The idea of this reformation, then, is to ensure more reflection of the vast diversity and experience of the membership in the activities of the ICCBA, to enhance communication, and to avoid overlapping or improper aggregation of tasks within one group. The amendment would allow for the appointment of specialised Working Groups on distinct Defence or Victims issues, which, at present, are largely overseen by the EC.</p>

	<p>Article 22: Duties</p> <p>The Defence Committee shall take into consideration the interests of suspects and accused and, through a commentary, provide proposals to the Legal Advisory Committee and advise the Executive Council and the General Assembly on all matters affecting the Defence.</p> <p>PART XI:</p> <p>VICTIMS COMMITTEE</p> <p>Article 23: Composition</p> <p>The Victims Committee is comprised of seven Full Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional consecutive terms. One of the seven Victims Committee Members shall be designated as chair by the other Members. The Chair of the Victims Committee reports to the Executive Council. At least three Members must be engaged in cases before the ICC or must have been engaged in a case during the three years preceding the elections.</p>		
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	<p>Article 24: Duties</p> <p>The Victims Committee shall take into consideration the interests of victims and, through a commentary, provide proposals to the Legal Advisory Committee and advise the Executive Council and the General Assembly on all matters affecting Counsel for Victims.</p>		
<p>Amendment II.2 Replacing Legal Advisory Committee with dedicated Working Groups for textual amendment responses and proposals</p>	<p>PART XIII: LEGAL ADVISORY COMMITTEE</p> <p>Article 27: Composition The Legal Advisory Committee is comprised of three Full Members and two Associate Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional consecutive terms. One of the five Legal Advisory Committee Members, who shall be on the ICC List of Counsel, shall be designated as chair by the other Members. The Chair of the Legal Advisory Committee reports to the Executive Committee.</p> <p>Article 28: Duties The Legal Advisory Committee is responsible for:</p>	<p>PART XIII: LEGAL ADVISORY COMMITTEE [Struck]</p> <p>[Also struck references to LAC – Article 4.1.f; 5.3.k; 8.12.g]</p>	<p>This amendment reflects practice of the last several years, which have seen both the Working Group on Gender and Harassment appointed to deal with certain administrative texts, as well as the Working Group on Code of Conduct appointed to deal with textual amendments.</p>

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	<p>Considering proposed amendments to the ICC Rules of Procedure and Evidence and other recognized legal texts; Representing the interests of all Members of the ICCBA; Proposing and drafting amendments to the ICC Rules of Procedure and Evidence and other recognized legal texts which are in the interest of Members of the ICCBA and/or their clients, as appropriate; and Liaising with the elected representative of Counsel within the Advisory Committee on Legal Texts (“ACLT”).</p> <p>The Legal Advisory Committee, after review and consultation with the Executive Committee, may present to the ACLT proposals or observations on possible amendments to the legal texts of the Court.</p>		
<p>Amendment II.3 Replacing Amicus Committees with issues-specific working groups capitalizing on specialities as found in the wider cross-section of the membership</p>	<p>PART XVI: AMICUS COMMITTEE Article 36: Composition The Amicus Committee is comprised of three Full Members and two Associate Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional</p>	<p>PART XVI: AMICUS COMMITTEE [Struck]</p> <p>[Also struck references to LAC – Article 4.1.i; 5.3.j and k; 8.12.g]</p>	<p>This amendment reflects a need to be able to cover a wide cross-section of issues ripe for Amicus before the ICC. The EC would have the power to call upon the membership on certain issues, and specific individuals within its membership depending on the issues before the Court requiring <i>amicus</i> submissions, to provide the greatest expertise in making submissions before the ICC on the variety</p>

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	<p>consecutive terms. One of the five Amicus Committee Members, who shall be on the ICC List of Counsel, shall be designated as chair by the other Members.</p> <p>The Chair of the Amicus Committee reports to the Executive Council.</p> <p>Article 37: Duties</p> <p>The Amicus Committee is responsible for the following tasks:</p> <p>Considering and responding to requests for Amicus curiae briefs by the ICC President and Chambers.</p> <p>Considering and responding to requests for Amicus curiae briefs submitted to the Executive Council.</p> <p>If an issue is presented on which the clients of Members of the ICCBA have significantly differing interests (such as those of Counsel for the Defence and Victims) the Amicus Committee may decide to divide itself to work independently with each group.</p>		<p>of issues that require such attention. This change would also allow for two separate Working Groups to be created on any one intervention – one for Defence and one for Victims avoiding a triple-overlap of three existing Constitutional Committees on any one issue that may be presented to the EC for intervention.</p>
<p>Amendment II.4 Removal of the Membership Committee</p>	<p>PART XIV MEMBERSHIP COMMITTEE</p> <p>Article 29: Composition</p>	<p>Part XIV REGULATION OF MEMBERSHIP STATUS</p>	<p>As members are pre-vetted by ICC List processes, in recent years there has been no review of ICCBA membership applications by this Committee. The</p>

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	<p>applications for membership to the ICC List of Counsel. Any additional duties, and terms thereof, must be approved by a Resolution of the General Assembly.</p> <p>Article 31: Admission A person whose membership application as a Member is denied is promptly notified of such a decision in writing. The decision of the Membership Committee may be appealed before the Executive Council within 30 days of receipt of the notice.</p> <p>Article 32: Suspension of Membership A Member may be suspended from the ICCBA. Suspended Members cease to enjoy all voting rights and cease to be active participants in any office they may hold or Committees they may be Members of until such time as the suspension is lifted. The suspension may result from a request by a Member or a national professional body having authority over the Member in question. The suspension may be justified on</p>	<p>Article 31: Admission All members admitted to the ICCBA shall be notified in writing pursuant to internal directive for admission procedure. Any person whose membership application as a Member is denied may appeal before the Executive Council within 30 days of receipt of the notice.</p> <p>Article 32: Suspension of Membership A Member may be suspended from the ICCBA by Majority decision of the Professional Standards Advisory Committee. Suspended Members cease to enjoy all voting rights and cease to be active participants in any office they may hold or Committees they may be Members of until such time as the suspension is lifted. The suspension may result from a request by a Member or a national professional body having authority over the</p>	

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	<p>the basis of health reasons, conduct, or the practice of a professional activity which is incompatible with the duties, responsibilities, and obligations of Counsel pursuant to the Rome Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel and all related directives and regulations including failure to pay annual membership fees.</p>	<p>Member in question. The suspension may be justified on the basis of health reasons, conduct, or the practice of a professional activity which is incompatible with the duties, responsibilities, and obligations of Counsel pursuant to the Rome Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel and all related directives and regulations including failure to pay annual membership fees. The reasons for suspension will be set forth in a written notice of the Professional Standards Advisory Committee.</p> <p>[Also struck references to MC – Article 4.1.i; 5.3.g and k; 8.12.h]</p>	
<p>Amendment II.5 Changing membership of the CSSC from 7 persons to 5 persons in committee [Contingent upon passage of Amendment II.1]</p>	<p>Article 25: Composition The Counsel Support Staff Committee is comprised of seven Associate or Affiliate Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional</p>	<p>Article 25: Composition The Counsel Support Staff Committee is comprised of [five] Associate or Affiliate Members elected by the General Assembly for a term of one year. Members may be re-elected for a maximum of two additional</p>	<p>In order to synchronise the remaining committees, the CSSC would become a 5-member committee going forward, on par with all other Constitutional Committees and reflecting the previous amendments ensuring representation of counsel support staff in the EC.</p>

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	consecutive terms. One of the seven Counsel Support Staff Committee Members shall be designated as chair by the other Members. The Chair of the Counsel Support Staff Committee reports to the Executive Council. At least three Members must be engaged in a case before the ICC or must have been engaged in a case during the three years preceding the elections.	consecutive terms. One of the [five] Counsel Support Staff Committee Members shall be designated as chair by the other Members. The Chair of the Counsel Support Staff Committee reports to the Executive Council. At least [two] Members must be engaged in a case before the ICC or must have been engaged in a case during the three years preceding the elections.	
<p><u>Amendment III</u> Setting a calendar month for the ICCBA General Assembly</p>	<p>Article 5 General Assembly 3. The General Assembly shall hold an Annual Meeting. The following topics must be discussed at the Annual Meeting:</p>	<p>Article 5 General Assembly The General Assembly shall hold an Annual Meeting [in the month of September.] The following topics must be discussed at the Annual Meeting:</p>	<p>The Membership requires a set date (or period in the calendar) to be able to predict when the ICCBA General Assembly may occur. Due to the pandemic and other, the General Assembly has ranged from June to September/October to late November. Members are located all over the world and may want to travel to be physically present; further, the date needs to be one in the calendar that better allows a newly elected President/committees to work alongside the ICC’s schedule – the ASP in particular – but also the List of Counsel training and other similar initiatives that gather Counsel together.</p>

[END]