



General Debate Statement
Twenty-First Session of the Assembly of States Parties
5-6 December 2022

Excellencies and esteemed colleagues,

The International Bar Association is honoured to submit this written statement to the General Debate addressing key issues raised in our paper [*Priorities and Recommendations for the 21st Session of the International Criminal Court Assembly of States Parties*](#).

The IBA was established in 1947 to contribute to global stability and peace through the administration of justice. Our members include more than 80,000 individual international lawyers, and 190 bar associations and law societies from more than 170 countries.

The IBA is a strong supporter of the International Criminal Court (ICC). Since 2005, our International Criminal Court & International Criminal Law Programme has promoted cooperation and support for the ICC and monitored issues related to fairness and equality of arms. In 2021, we issued a comprehensive [*Guide for States Parties*](#) recommending measures that can be taken individually and collectively through the Assembly to strengthen the International Criminal Court and the Rome Statute System. Our submission to the 21st Session of the Assembly focuses significantly on promoting the implementation of recommendations in the Guide in relation to issues that are under consideration.

In this statement, the IBA seeks to highlight three critical issues that are on the agenda of this session and urge States Parties to take decisions that support the just, fair and effective functioning of the ICC.

First, we urge all States Parties to support a significant increase in the budget of the Court for 2023. Although we acknowledge the difficult financial situation faced by many States Parties, additional investment is required this year for the Court to respond to the growing number of situations and cases. The Assembly's Committee on Budget and Finance has recognized the need for such an increase, and we encourage States Parties to carefully review its recommendations, taking into account the views of the ICC and civil society. The IBA urges States Parties to refrain from proposing or supporting any efforts to reduce the 2023 budget further than the Committee has recommended, as this would undermine the effectiveness of the ICC and force the Court to make difficult decisions that could erode its credibility and independence.

Second, we urge the Assembly to redouble its efforts to promote State cooperation with the ICC. The ICC simply cannot function effectively without the full cooperation of States Parties. Despite the Assembly's important efforts to strengthen cooperation with the Court - especially the work conducted by the Co-Facilitators on cooperation (France and Senegal) - successive reports by the Court demonstrate a concerning lack of positive responses to requests for cooperation, especially to requests from the defence. Intensified efforts and additional resources are clearly required for the Assembly to ensure that many more states enact national implementing legislation, ratify the

Agreement on Privileges and Immunities and enter into cooperation agreements with the Court, as well as to advance the Assembly's 66 recommendations on cooperation and recommendations contained in the Court's reports on cooperation. The IBA's Guide for States Parties contains detailed recommendations on strengthening national legal frameworks for cooperation. It also recommends that the Assembly establish a periodic review process where, each year, selected States Parties report to the Assembly on their national frameworks and receive constructive feedback and technical assistance from other States Parties and civil society to strengthen them.

Third, we urge the Assembly to support full consideration and implementation of the Independent Expert Review's recommendations to strengthen the position of the defence at the ICC. At a time when so much attention is focussed rightly on the needs of the Office of the Prosecutor, the principle of the equality of arms demands that the challenging situation for the defence must also be considered. Regrettably, so far, the Assembly has demonstrated little regard for the rights of accused persons to an effective defence in assessing the Experts' recommendations. A recommendation to strengthen the voice of the defence in the Court, improve administration and increase support to defence teams by transforming the Office of Public Counsel for Defence into a Defence Office with increased responsibilities has yet to be given full consideration. Despite the efforts of the Bureau's Facilitator on Legal Aid, only minor progress has been made in achieving a full reform of the legal aid policy. Important issues including working conditions for defence teams and support staff, as well as taxation, remain unresolved. This is largely due to the persistent and unrealistic demands of the ASP that the review of the policy must be within existing resources. The Assembly must prioritise addressing these issues in 2023. Effective solutions – including an increase in legal aid resources - must be found to ensure that the rights of the accused are respected and to protect the legitimacy of the Court. As Robert H. Jackson emphasised in his opening statement before the Nuremberg International Military Tribunal:

We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow.

In conclusion, the 21st Session of the Assembly takes place at a critical moment in the history of the ICC and many of the decisions taken this week and next year will shape the work of the Court for years to come. The IBA urges all States Parties to strive for outcomes that reflect their shared commitment to advance international justice and determination to end impunity.

Thank you.