

## CONSTITUTION

### **Association of Defence Counsel Practising Before the International Courts and Tribunals.**

#### **PREAMBLE**

Defence Counsels practising before the International Criminal Tribunal for the Former Yugoslavia,

**ASSEMBLED** in The Hague on 16 December 2016 on the occasion of the General Assembly of the Association of Defence Counsel Practising Before the International Criminal Tribunal for the Former Yugoslavia (ICTY);

**CONSIDERING** the amendments to the ICTY Rules of Procedure and Evidence adopted by the Judges during their 27th Plenary Session held in July 2002;

**RECALLING** the creation in October 2002 of the Association of Defence Counsel Practising Before the ICTY;

**NOTING** the official recognition of the Association of Defence Counsel Practising Before the ICTY in December 2002;

**NOTING** the official recognition of the Association of Defence Counsel Practising Before the ICTY by the Mechanism for International Criminal Tribunals (MICT) in August 2015;

**MINDFUL** of the obligation and the necessity of ensuring fair trials before the International Courts and Tribunals;

**CONVINCED** of the importance of the essential role played by Defence Counsels in ensuring fair trials and respect for the rights of persons accused in accordance with internationally recognised standards; and

**RECOGNIZING** that the Association of Defence Counsel Practising Before the International Courts and Tribunals is a partner, along with the organs of the respective International Courts or Tribunals at which they are the recognised Association of Counsel;

**HAVE ADOPTED** the following modified Constitution.

## **PART I**

### **GENERAL PROVISIONS**

#### **Article I - Name and Seat**

1. The name of the Association shall be the "Association of Defence Counsel Practising Before the International Courts and Tribunals".
2. The short name for the Association is "ADC".
3. The seat of the ADC is established at The Hague in the Netherlands.

#### **Article 2 – Objectives**

The objectives of the ADC are:

1. To support the function, efficiency and independence of Defence Counsel practising before the International Courts and Tribunals;
2. To promote and ensure the proficiency and competence of Defence Counsel Practising Before the International Courts and Tribunals in the fields of advocacy, substantive international criminal law and information technology systems relevant to the representation of persons accused before the International Courts and Tribunals;
3. To offer advice to the President, the Chambers and the Registrar of the International Courts and Tribunals in relation to the right of the accused to a fair trial and the Rules of Procedure and Evidence as well as Regulations, Practice Directives and Policies related to the work of Defence Counsel, such as *inter alia*, the Directive on the Assignment of Counsel, the Code of Professional Conduct for Counsel Appearing Before the International Courts and Tribunals and the applicable Legal Aid Policies; and
4. To oversee the performance and professional conduct of Defence Counsel, in so far as it is relevant to their duties, responsibilities and obligations pursuant to the Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel Appearing Before the International Courts and Tribunals, the Directive on the Assignment of Defence Counsel, and the Detention Rules and Regulations of the International Courts and Tribunals

## **PART II**

### **MEMBERSHIP**

#### **Article 3 – Qualifications**

1. The membership of the ADC is comprised of Full Members and Associate Members.
2. Any person who fulfils the following requirements is eligible to be a Full member:
  - a. Being admitted to the practice of law in a state, or being a university professor of law;
  - b. Possessing established competence in criminal and/or international criminal law / international humanitarian law / international human rights law;
  - c. Possessing at least seven years of relevant experience, whether as a judge, prosecutor, attorney or in some other capacity, in criminal proceedings;
  - d. Having written and oral proficiency in one of the two working languages of the Tribunal or having obtained a waiver pursuant to Rule 44 B of the Rules of Procedure and Evidence.
  - e. Not having been found guilty or otherwise been disciplined in relevant disciplinary proceedings where being admitted to the practice of law or a university professor of law;
  - f. Not having been found guilty in relevant criminal proceedings.
3. Only Full Members are eligible to act as counsel to represent persons accused before the International Courts and Tribunals, unless otherwise decided by an International Court or Tribunal where Counsel represents an accused person.
4. Any person who supports the objectives of the ADC is eligible to be an Associate Member.

#### **Article 4 - Membership Committee & Admission**

1. The Membership Committee is comprised of five Full Members. If less than five members are nominated for election then the Committee will be legally constituted with three members. Members of the Membership Committee are elected by the General Assembly by majority vote. Membership Committee members are elected for a term of one year and may be re-elected for a second and third term. No Membership Committee member may serve more than three consecutive terms. Members of the Executive Committee are not eligible to serve on the Membership Committee.

2. The Membership Committee reviews, and approves or denies membership applications on the basis of the criteria found in Article 3. An applicant is admitted if the majority of members of the Membership Committee support the application.
3. The Membership Committee may adopt internal procedures to govern the procedure for admission.
4. A person whose membership application as a Full member is denied is promptly notified of such decision in writing and offered to join the ADC as an Associate Member. The decision of the Membership Committee may be appealed before the Executive Committee within 30 days of reception of the notice.

### **Article 5 – Fees**

1. The membership year runs from the 1 January until 31 December inclusive.
2. All members of the ADC must pay an annual membership fee. The annual membership fee is determined by the General Assembly on the recommendation of the Executive Committee. The annual membership fee must be paid in one instalment, either within 30 days of the beginning of the membership year or, for new members, within 30 days of approval of membership, on the basis of the number of months remaining in the current membership year.
3. In addition, Full members assigned as counsel to a case before an International Court or Tribunal where the ADC is the recognised Association of Counsel must pay an additional monthly fee during the Pre-trial, Trial and Appeals phases of the proceedings. The monthly fee for each phase is determined by the General Assembly on the recommendation of the Executive Committee. Membership fees may be paid in one lump sum or in monthly instalments but no later than 30 days following the end of each respective month.

### **Article 6 - Termination of Membership**

1. Membership ceases upon:
  - a. the death of the member;
  - b. the resignation of the member, which becomes effective upon receipt by the ADC of the member's written resignation;
  - c. the discontinuation of membership, following a decision by the Membership committee if:
    - i. a member no longer satisfies the requirements for membership as outlined in the Constitution of the ADC; or
    - ii. a member no longer consistently fulfils his or her obligations towards the ADC; or
    - iii. the ADC cannot reasonably be expected to allow the membership to continue;

- d. the discontinuation of membership by the Disciplinary Council, which may only be decided upon when a member persistently acts contrary to the articles, regulations and resolutions of the ADC, or where the conduct adversely affects the ADC in an unreasonable manner.
2. The membership will end at the earliest date allowed following the day on which notice was given.
3. A member whose membership is discontinued will be promptly notified in writing of the resolution and the reason(s) for which membership is being discontinued or not renewed. The member may file an appeal to the Executive Committee within 30 days of the receipt of the notice of the resolution. Pending the resolution of the appeal, the member shall be suspended from membership privileges. The suspended member, however, shall have the right to make representations before the Executive Committee.
4. The Disciplinary Council or Membership Committee may only adopt a resolution to discontinue membership if the reasons for doing so are grave and for members who are currently assigned or appointed to cases, after consulting with the Registrar of the respective International Court or Tribunal at which they are currently practising.

## **PART III**

### **EXECUTIVE COMMITTEE**

#### **Article 7 – Composition**

1. The Executive Committee is composed of the President and four Vice-Presidents.
2. The members of the Executive Committee are elected by the General Assembly from a list of nominees. All members of the ADC may nominate a Full Member for election. A Full Member is officially nominated to run for election when nominated/supported by three members. The list of nominees shall be submitted to all members no later than five days before the election. In exceptional circumstances, nominations can be made during the General Assembly prior to the election.
3. The members of the Executive Committee are elected for a term of one year and are eligible to be re-elected for two consecutive terms.
4. One of the members of the Executive Committee is elected as President of the ADC by the members of the Executive Committee. The election of the President is held immediately following the election of the Executive Committee.
5. Where possible, the membership of the Executive Committee shall reflect the legal traditions of the common law and civil law systems and the diversity of the membership.

#### **Article 8 - Duties of the Executive Committee**

1. The Executive Committee is responsible to the General Assembly for the day-to-day operations and management of the ADC, subject to the limitations set out in the Constitution.
2. The day-to-day operations and management of the ADC includes *inter alia*: maintaining an updated list of members, servicing members in accordance with the present Constitution, keeping records of all activities, managing the financial assets of the ADC, taking all necessary measures to achieve the objectives of the ADC, organizing and managing the rooms and equipment made available to Defence Counsel, maintaining effective liaison with the Registry sections of the International Courts and Tribunals, maintaining the website of the ADC, convening General Assemblies and representing the ADC as detailed in paragraph 3.
3. Representation of the ADC refers to the representation of all members as a collective body before (1) the organs of the International Courts and Tribunals (Chambers, Office of the Prosecutor and Registry), (2) International

- organizations, (3) Non-Governmental Organizations, (4) Persons accused before the International Courts and Tribunals, (5) the media, (6) the public and (7) any other agency whether public or private, for the purposes of achieving the objectives of the ADC.
4. The Executive Committee appoints one of its members or any other Full Member to the disciplinary mechanisms of the International Courts or Tribunals at which the ADC is the recognised Association of Counsel, pursuant to the internal rules of the respective International Court or Tribunal.
  5. The Executive Committee may create special *ad hoc* committees in addition to the membership committee, training committee and disciplinary council, for the purpose of assisting it in the accomplishment of its duties.
  6. One of the Vice Presidents is assigned by the President to take minutes of Executive Committee meetings. The minutes are confirmed by the President and made available to members upon request.
  7. The Executive Committee may adopt internal directives or procedures as necessary for its functioning and for the day-to-day operations and management of the ADC. Such internal directives or procedures must be consistent with the present Constitution, the Statute, the Rules of Procedure and Evidence, Practice directives, and Orders of the International Courts and Tribunals,
  8. The Executive Committee may secure the services of a full time employee to act as Head of Office of the ADC. The ADC Head of Office reports to the President and is responsible to the Executive Committee for the accomplishment of his duties. The terms and conditions of service of the ADC Head of Office are determined by the Executive Committee subject to the adoption of the budget by the General Assembly. The Executive Committee may also secure the services of one or more part-time employees as necessary subject to the same conditions.
  9. The express consent of the majority of the Executive Committee is required to legally bind the ADC towards third parties.
  10. The Executive Committee is authorised to enter into agreements to purchase, alienate or encumber registered goods or services not exceeding 40,000 euros.

#### **Article 9 - Termination of Membership of the Executive Committee**

1. Membership in the Executive Committee ends if:
  - a. The member ceases to be a Full member of the ADC;
  - b. The member resigns from the Executive Committee; or
  - c. The member is dismissed by the General Assembly.
2. The General Assembly may, on the recommendation of the Executive Committee or *proprio motu*, dismiss a member of the Executive Committee for cause, by an

- absolute majority of the votes cast, including a minimum of 25 full members. The General Assembly may also suspend a member of the Executive Committee for a period not exceeding 90 days. If the suspension is not followed within three months by a resolution to dismiss the member, the suspension shall be deemed to have lapsed.
3. A member of the Executive Committee may request to temporarily withdraw from the Executive Committee for a period not exceeding 45 days. If at this time he has not requested to be reinstated as a member of the Executive Committee, the member will be deemed to have resigned.
  4. The Executive Committee may, after giving the member an opportunity to be heard, suspend a member of the Executive Committee for a period not exceeding 45 days by unanimous vote of the four other members of the Executive Committee. The object of such suspension must be to refer the matter to the General Assembly for consideration. If no action has been taken by the General Assembly after 45 days, the suspension shall be deemed to have lapsed.
  5. Without prejudice to paragraphs 2, 3 and 4, if the membership of the Executive Committee falls below five members, the committee remains lawfully constituted. The Executive Committee shall however convene a meeting of the General Assembly to proceed with the election of a new member of the Executive Committee within a maximum of 45 days.

#### **Article 10 – Finances**

1. The financial year of the ADC runs from the first day of January up to and including the thirty-first day of December.
2. On behalf of the Executive Committee, the Vice President (Finance) is responsible for keeping detailed and complete financial records and accounts of the ADC. The full financial records are disclosed to the members on an annual basis and made public in accordance with the applicable laws of the Netherlands.
3. The Vice President (Finance) is responsible for preparing the end of year financial report of the ADC, including a statement of revenues and expenditures as well as a balance sheet, no later than 30 January of the new financial year.
4. The end of year financial report of the ADC is approved by the Executive Committee for onwards submission to the Internal Auditors of the ADC. The end of year financial report is communicated to all members no later than 28 February of the new financial year along with the report of the Internal Auditors, including a recommendation that it be adopted or if necessary that further measures be implemented before its adoption.



5. Two full members of the ADC are appointed by the General Assembly to act as Internal Auditors. Internal Auditors are elected on the basis of their knowledge of accounting and experience in accounting and financial management. They are appointed for a term of one year and may be reappointed for a maximum of two additional terms. Internal Auditors may not be members of the Disciplinary Council or any permanent committee of the ADC.
6. The role of Internal Auditors is to verify the financial records and accounting practices of the Executive Committee of the ADC, both during and at the end of the financial year. The Internal Auditors, may at any time, request access to all the financial records of the ADC.
7. The Executive Committee shall keep the financial records referred to in paragraphs 2 and 3 for a period of five years.

## PART IV

### GENERAL ASSEMBLY

#### Article 11 -General Assembly

1. The General Assembly consists of all the members of the ADC.
2. All the powers of the ADC that have not been entrusted to the Executive Committee by the laws of the Netherlands or by the present Constitution are vested in the General Assembly.
3. The General Assembly shall hold an Annual meeting during the last three months of the financial year. The following topics must be discussed at the Annual meeting of the General Assembly:
  - a. the annual report of the Executive Committee;
  - b. the annual report of the Membership Committee;
  - c. the annual report of the Training Committee;
  - d. the annual report of the Disciplinary Council;
  - e. the annual report on the activities of any *ad hoc* committees created by the Executive Committee;
  - f. the election of members to the Executive Committee, Disciplinary Council, Membership Committee and Training Committee;
  - g. the report of the Vice President (Finance) on the current financial situation of the ADC as well as on the expected financial results for the current year;
  - h. the report of the Internal Auditors;
  - i. the appointment of the Internal Auditors;
  - j. the proposed plan of activities for the upcoming financial year;
  - k. the proposed budget for the upcoming financial year; and
  - l. any other proposals by the Executive Committee or by any other member.
4. Additional meetings of the General Assembly may be convened by the Executive Committee as necessary.
5. A special General Assembly Meeting may also be held at the request of one-tenth of the Full Members. A request for a special General Assembly Meeting shall be made in writing. Upon reception of a valid request, the Executive Committee shall convene a special General Assembly Meeting within 30 days.
6. The convening of General Assembly meetings shall be in writing, not less than twenty-one days from the date of the meeting. The convocation shall list the subjects to be discussed. All members may also submit issues by communicating the issue in writing, by facsimile transmission or by electronic mail to the Executive Committee at least three working days prior to the date of the meeting.

7. All members in Good Standing of the ADC may attend meetings of the General Assembly.
8. The General Assembly may adopt regulations that are neither contrary to the law of the Netherlands, the Constitution, the Statute, the Rules of Procedure and Evidence, Practice directives, and Orders of the International Courts and Tribunals,
9. Without prejudice to Article 22, the *quorum* of the General Assembly is one-tenth of the Full Members present in person or by written or electronic proxy. The *quorum* is confirmed before a General Assembly Meeting is called to order. If the quorum is not obtained, a new General Assembly Meeting shall be convened.

### **Article 12 - Chair and Minutes**

1. General Assembly Meetings are chaired by the President of the ADC. If the President is absent, one of the other members of the Executive Committee acts as Chair. Where a Chair cannot be designated in this manner, the General Assembly shall designate the Chair.
2. One of the Vice Presidents or the Head of Office is assigned by the President to keep minutes of the proceedings of each meeting of the General Assembly. The minutes are confirmed by the Chair and posted on the members-only section of the ADC website.

### **Article 13 - Voting Right**

1. Each member in Good Standing of the ADC is entitled to vote.
2. A member of the ADC in Good Standing refers to a members who has not been suspended and has paid the annual membership fee; and if applicable the monthly dues
3. Votes shall be cast by personal attendance or in electronic form. A member who is unable to vote in person may vote by proxy. Proxies must be in writing or electronic form. A member may represent up to five members by proxy.
4. Abstentions shall not be counted as a vote.

### **Article 14 – Procedure for Elections and Resolutions**

1. Resolutions of the General Assembly and elections of members to one of the Committees and the Disciplinary Council are adopted by absolute majority, unless specified otherwise in the Constitution.

2. In addition to the subjects in the agenda circulated to the members prior to the opening session of the General Assembly Meeting, a member of the ADC may submit proposals for resolutions relevant to the objectives of the ADC. Proposed resolutions must be submitted in writing to the Executive Committee not less than two days before the opening of the General Assembly Meeting. A resolution submitted after this deadline may only be considered by the General Assembly if the Executive Committee grants a waiver of the time limitation.
3. A copy of proposed resolutions is provided to all members of the ADC before the General Assembly. Copies of proposed resolutions received less than two days before the opening may be distributed at the General Assembly.
4. The Executive Committee shall report its recommendations on each resolution to the General Assembly. The members shall be given a reasonable opportunity to be heard on proposed resolutions submitted.
5. All matters shall be voted by a show of hands, except for the election of members to the officers of the ADC.
6. The adoption of a resolution by the General Assembly is pronounced by the Chair. This pronouncement is determinative.
7. The election of the officers of the ADC (President and Vice Presidents) and of the members of the Disciplinary Council, Membership Committee and Training Committee are done by secret ballot.
8. The General Assembly first proceeds with the appointment of an individual participating at the General Assembly to preside over the elections (Elections chair). The Elections Chair may not be nominated for a position.
9. The Elections Chair may be assisted by persons who are not members to examine and count the ballots.
10. The Elections Chair examines the proxies received and confirms the *quorum* for the elections.
11. Election to any position requires an absolute majority of the votes.
12. The Elections Chair holds as many ballots as are necessary, proceeding in the following order until members have been elected to each position: Executive committee (5), Disciplinary Council (5), Membership Committee (5) and Training Committee (3)

## **PART V**

### **DISCIPLINARY COUNCIL**

#### **Article 15 – Composition**

1. The Disciplinary Council is comprised of five Full Members elected by the General Assembly for a term of one year. If less than five members are nominated for election then the Committee will be considered legally constituted with three members. Members may be re-elected for a maximum of one additional consecutive term. Members of the Council may not be a member of any permanent committee of the ADC. One of the members of the Disciplinary Council shall be designated as chair by the other members. All decisions of the Disciplinary Council shall taken by majority vote.
2. Decisions by the Disciplinary Council shall be governed by the present Constitution, the Statute, the Rules of Procedure and Evidence, the Code of Professional Conduct for Counsel the Directive on the Assignment of Defence Counsel, and the Detention Rules and Regulations of the respective International Courts or Tribunal at which the ADC is the recognised Association of Counsel. It shall also take into consideration the codes of practice governing the legal profession in the home jurisdiction of members.
3. The Disciplinary Council shall determine its own procedure, which must be approved by the Executive Committee. The Executive Committee shall ensure that all members of the ADC are duly informed of this procedure.

#### **Article 16 – Duties**

1. The Disciplinary Council is an independent organ of the ADC, responsible to the General Assembly for the following tasks:
  - a. To monitor the conduct of members of the ADC in the representation of a suspect or accused;
  - b. To adjudicate on complaints received against members of the ADC for alleged misconduct;
  - c. To provide advisory opinions on matters relating to the present Constitution, any statute, rules, codes, directives or regulations, or such documents which may be applicable to members at the International Courts and Tribunals where the ADC is the recognised Association of Counsel.

#### **Article 17 – Monitoring**

1. The Disciplinary Council does not engage in active monitoring.
2. Where, however, the Disciplinary Council receives reliable information which gives it reason to believe that a Full member of the ADC has allegedly engaged in

conduct contrary to, or in violation of the present Constitution, any statute, rules, codes, directives or regulations, or such documents which may be applicable to members at the International Courts and Tribunals where the ADC is the recognised Association of Counsel, it may decide to wait until a complaint is filed or inform the member of the alleged misconduct with a view to allowing the member to review his or her conduct. This information will be treated confidentially and will not be communicated to any other person.

### **Article 18 – Adjudicating on complaints**

1. Complaints on alleged misconduct of Full Members may be filed before the Disciplinary Council by:
  - a. Any Full member of the ADC;
  - b. Persons accused by the International Courts and Tribunals; and
  - c. Staff members of the International Courts and Tribunals who consider their rights or interests are affected by the alleged professional or ethical misconduct.
2. Complaints must be submitted in writing, identifying the alleged misconduct.
3. Upon receiving a complaint, the Disciplinary Council shall, on the basis of the complaint, decide whether there are sufficient grounds to proceed on the complaint.
4. In the event the Disciplinary Council decides not to proceed on the complaint it shall inform the complainant of the reasons for doing so and of the possibility and procedure for the complainant to address the matter to the respective disciplinary mechanism of the International Court or Tribunal at which the member practices.
5. In the event the Disciplinary Council decides to proceed on the basis of the complaint, it shall inform the respondent member of the complaint.
6. The Disciplinary Council shall provide the respondent member with the opportunity to be heard in relation to the complaint.
7. The Disciplinary Council shall review the substance of the complaint as well as the submissions of the complainant and of the respondent member in light of the applicable regulations. Where necessary, the Disciplinary Council may seek to obtain further information from third parties on a confidential basis.
8. Having reviewed all available information, the Disciplinary Council may:
  - a. Mediate between the parties to the complaint; or
  - b. Issue a formal warning to the respondent member for his conduct; or
  - c. Refer the complaint to the disciplinary mechanism of the respective International Court or Tribunal at which the member practices; or

- d. Terminate membership of that member in accordance with Article 6 paragraph 1(d).
9. The Disciplinary Council shall inform the respondent member and the complainant of its decision within 21 days of receipt of the complaint. It shall also inform the Executive Committee of its decision.
10. Following a decision pursuant to paragraph 8(b) and 8(d), the respondent member may appeal the decision before the Executive Committee of the ADC. The appeal must be filed in writing within 7 days of receipt of the decision by the Disciplinary Council.
11. All information acquired and decisions are confidential

### **Article 19 – Advisory Opinions**

1. Members may request the Disciplinary Council to provide advisory opinions on the present Constitution, any statute, rules, codes, directives or regulations, or such documents which may be applicable to members at the International Courts and Tribunals where the ADC is the recognised Association of Counsel.
2. Advisory opinions are confidential unless both the ADC and the member who requested the opinion agree otherwise.

## **PART VI**

### **TRAINING COMMITTEE**

#### **Article 20 – Composition**

The Training Committee is comprised of three members elected by the General Assembly for a term of one year, of which at least two must be Full members. Members may be re-elected for additional terms. One of the three members of the Training Committee shall be designated as chair by the other members. The chair of the Training Committee reports to the Executive Committee.

#### **Article 21 – Duties**

The Training Committee is responsible for the design and implementation of advocacy training and training on substantive international criminal law for all members of the ADC, whether assigned to a case or not. They are also responsible for assisting the Executive Committee in obtaining funding to make such training possible.



## **PART VII**

### **FINAL PROVISIONS**

#### **Article 22 – Amendments**

1. A General Assembly Meeting for the purpose of reviewing the Constitution of the ADC may be held at a date to be fixed by the Executive Committee.
2. A copy of the recommended amendments to the present Constitution is submitted to the Executive Committee not less than twenty-one days before the convening of the General Assembly Meeting. The proposed amendments are made available to all members.
3. Amendments to the present Constitution come into force for all members of the ADC when two thirds of Full Members have voted in favour of adoption at a General Assembly. Voting can be in person, by proxy or electronically.
4. If a General Assembly Meeting does not have at least two-thirds of Full Members casting a vote in favour of adoption, then a second meeting shall be held within four weeks of the time of the original meeting and the same resolution with the proposed amendments shall be placed on the agenda. The proposed resolution shall then be adopted when a majority of the Full Members are have cast a vote, in person, by proxy or electronically, in the second General Assembly Meeting and have voted in favour of adoption.
5. Amendments adopted by the General Assembly shall be deemed effective only after a notarial instrument has been drawn up thereof. Each member of the Executive Committee shall be authorized to execute the instrument.

#### **Article 23 – Dissolution**

1. The General Assembly may dissolve the ADC by way of a resolution.
2. The provisions in paragraphs 1 to 6 of Article 14 shall apply accordingly.
3. The balance of the funds remaining after liquidation shall be divided among those who were members at the time when the resolution to dissolve was adopted. Each of them shall receive an equal share. However, the resolution to dissolve may also specify another destination for the remaining balance.

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