

Statement of American Bar Association President Mary Smith to the 22nd Session of the Assembly of States Parties to the International Criminal Court

December 7, 2023

Madam President, Members of the Assembly of States Parties, and Esteemed Colleagues:

On behalf of the American Bar Association, thank you for the opportunity to submit this statement to the Assembly. The ABA is the largest voluntary association of lawyers and legal professionals in the world, and is an independent, national representative organization of the legal profession in the United States. The ABA and its entities are committed to improving the legal profession and advancing the rule of law both domestically and globally, including through holding governments accountable under law, working for fair legal processes, and increasing meaningful access to justice. The ABA has [long supported](#) the International Criminal Court (ICC) and encouraged greater recognition and support for the ICC's role in establishing accountability, strengthening legal norms, and contributing to the prevention of future atrocities.

Within the ABA, the [Atrocity Crimes Initiative](#), a joint effort of the ABA's Criminal Justice Section and Center for Human Rights, works to advance the prevention of atrocities and ensure that perpetrators are held accountable. Through its Center for Global Programs, the ABA [also works](#) to strengthen national-level justice systems, including in several ICC situation countries, and to support human rights defenders targeted for their work, including those documenting atrocities and advocating for accountability.

Over the past year, the Atrocity Crimes Initiative has worked to support practitioners of international criminal law and the ICC and to strengthen legal and policy frameworks on atrocities. The International Criminal Law Practice Project recently published a guide on [Judgment Drafting](#), the first installment in a long-term effort to convene groups of international criminal law practitioners with diverse experience to identify best practices addressing common challenges. On the national level, the ABA has also continued to encourage U.S. Congress and federal agencies to address gaps in federal law over crimes against humanity, building on significant legislation that strengthened jurisdiction over war crimes in 2022. In April, the ABA submitted a [statement to Congress](#) again urging pursuit of a crimes against humanity statute that will allow criminal law actions that accurately reflect the planning, leadership, scale, and harm inflicted through these crimes. In this submission and a [letter](#) to President Biden, the ABA also urged the United States to provide practical support to the ICC's investigations, including releasing evidence of atrocity crimes committed in Ukraine. Through the International Criminal Court Project, the Initiative will continue working to deepen understanding of the ICC's role and to advocate for more consistent support and constructive engagement across ICC situations.

Twenty-five years after the Rome Statute was signed, the ICC has clearly provided a crucial forum for justice for many victims of atrocities, and has set important precedents both in substantive international law and as a continually evolving international institution. On the latter, the work of the Group of Independent Experts, Review Mechanism, States, ICC officials, and civil society in their effort to strengthen the ICC through the review process has been commendable and invaluable to the Court. The review process has encouraged candid conversations on issues ranging from workplace culture to more consistent and predictable victims' participation, to specific cooperation and investigative challenges, and to maximizing the Court's impact for victims and communities.

One of the many important issues raised through the review process and which is expected to be advanced during this Assembly session is the ICC's legal aid policy, which seeks to ensure effective representation and equality of arms among parties at the ICC, issues crucial to the Court's credibility. The Assembly and Court should continue to monitor the legal aid policy's implementation and work with legal professionals to ensure that defense and victims' representatives, and the ICC organs that assist them, have the financial and institutional resources necessary to provide effective representation. As the Assembly determines how to monitor progress on the remaining recommendations, stakeholders should carefully consider how to ensure that the strategic thinking, transparency, and inclusivity of the review process is continued in the ongoing efforts of the Court and related Assembly mandates.

The ICC also continues to face significant challenges that require ongoing attention from all stakeholders. ICC officials face continued threats and attacks for their work (the ABA has [previously condemned](#) threats against the Court and urged States to respect its independence), as do civil society advocates around the world. Securing effective cooperation from States on the fulfillment of arrest warrants and witness protection, investigating atrocities during ongoing conflicts, and engaging meaningfully with affected communities all remain challenging. The Court also continues to face significant gaps between the need demonstrated for investigations, judicial proceedings, outreach, and assistance for victims to be effective, and the resources provided. A budget that properly supports the Court's work across situations is crucial to the ICC's legitimacy and its impact.

The ABA will continue to support the ICC as a crucial forum for justice for atrocity crimes, and to advance the rule of law and global practice of international criminal justice.

Thank you to the Court, the Assembly of State Parties, and fellow civil society organizations for your work to advance the cause of international justice and accountability.