The Hague, 17 October 2017

ADC-ICT Open Letter regarding the Proposed Common Code of Professional Conduct for all Lawyers and Counsel appearing before the International Criminal Tribunals

The ADC-ICT Executive Committee (ADC-ICT) expresses its appreciation to the “International Meetings of Defence” for its work in producing a Proposed Common Code of Professional Conduct (“Proposed Code”). We understand that there is an intention to ratify this document in some form during a further such meeting to be held in Nuremberg in November 2017.

The ADC-ICT Executive Committee is, regrettably, unable to support or sign the Proposed Code. Significant concerns have been raised by ADC-ICT members about the specific content of many of the provisions of the Proposed Code. Some provisions fall short of best practice in important respects; are less developed than, or conflict with, elements of codes of conduct of individual international courts to which counsel are already mandatorily subject; or are insufficiently specific to provide appropriate guidance and certainty.

We appreciate, in light of the extensive work done on the Proposed Code, that the ADC-ICT’s position may come as a disappointment. However, we remain willing and available to discuss the future development of a code of professional conduct for counsel practising before the international courts and tribunals.

In light of its potential significance, this process should involve the widest possible consultation. At a minimum, this must include all the voluntary organizations of counsel practising before the international courts and tribunals, and the registrars and judiciary of the international courts and tribunals. International associations of lawyers, domestic bar associations and non-governmental organizations working in the sphere of international criminal law should also have an opportunity to be genuinely involved.

The ADC-ICT wishes to make clear that it does not consider its members to be bound by the Proposed Code and that, since it is not the product of adequate consultation or consent of the ADC-ICT, should not be used by any disciplinary authority in the interpretation of existing codes of conduct of international tribunals to which members of the ADC-ICT may be subject.
As noted above, the ADC-ICT intends no disrespect to the work that has gone into the preparation of the Proposed Code. However, any additional or different professional standards than those to which counsel are already mandatorily subject requires careful consideration, precise drafting, and consensus amongst those affected.

Should you wish to discuss this further, please do not hesitate to contact the ADC-ICT Head Office.