International Criminal Court

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Assembly of States Parties

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Audit report on the cash reserves[1]

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[1] Courtesy translation by the External Auditor; Cour des comptes reference: ICC-2015-6.

I. Objectives and Scope of the audit

1. Pursuant to our letter of notification dated 19 October 2015, a team of three external auditors carried out an engagement at the International Criminal Court at The Hague (Netherlands) from 26 to 30 October 2015. The objective of this audit was to examine the appropriate level of the cash reserves of the Court and the risks that might be attached to their reduction.

2. The audit was conducted in accordance with the International Standards on Auditing (ISA), with the International Standards of Supreme Audit Institutions (ISSAI) and with the Financial Regulations and Rule of the International Criminal Court, as well as the additional terms of reference governing the audit of the Court.

3. An audit consists of either a direct reporting engagement or an attestation engagement. In a direct reporting engagement, the external auditor measures and assesses the subject according to criteria that they determine. In an attestation engagement, the audited organisation measures the subject in consideration and presents information related to this subject. The auditor then collects evidence of this information in order to formulate a reasonably sustained conclusion. This audit was planned as an attestation engagement for the financial information provided by the ICC. The financial information pertaining to retrospective and projected cash reserves were presented to the external auditor by the ICC in a cash flow statement and in a cash flow forecast.

4. The assurance given by this report on the sustainability of the cash is limited in scope as regards the International Standards on Auditing. In fact, the time and resources granted for this work did not allow an in-depth study of the projected financial situation of the ICC, which is the only way to give greater assurance on the assumptions of changes in the cash. Furthermore, the payment of the contributions by State Parties follows an irregular rhythm which increases the unpredictable character of the forecasts and may change at any time. This report was designed to establish whether, to the knowledge of the auditor, any anomalies tarnish the cash level forecasts established by the ICC at the time of the audit, and to then interpret this change, in order to optimally clarify, within an acceptable period time frame, the future resolutions that the Assembly ought to take.

5. Each observation and each recommendation has been discussed with the personnel concerned. The audit closing meeting was held on 30 October 2015 with Mr. Ivan Alippi, Director of Division of Management Services, Mrs Florence Bôle, Director of Office of Internal Audit, Mr. Gela Abesadze, Chief of the Finance section and representatives of the units (offices) of the Treasury, Accounts and Disbursements. The management has confirmed the validity of the submitted facts. This report fully takes its comments and responses into account.

II. Context and method

6. During its thirteenth session, which was held at The Hague on 24 and 25 June 2015, the Assembly of State Parties (ASP) of the International Criminal Court (ICC) approved a €6M increase in the budget for the Permanent Premises Project (PPP), following a request made by the project director. However, the ASP decided (Resolution ICC/ASP/13/Res.6) that this increase shall not, under any circumstances, be funded by the contributions of the State Parties or by the Contingency Fund, but that it must be financed by the Funding set aside for employee benefits liabilities and by the Working Capital Fund.

7. In this resolution, the ASP requested the external auditor of the ICC to submit to it two reports, the first on "*the appropriate level of the cash reserves of the Court and on any risk that might be attached to their reduction*"; and the second on a "*detailed review of the project accounts with emphasis on the cost overruns*".

8. The mandate for an external audit of the ICC, granted in 2012 by the Assembly of States Parties to the *Cour des comptes*, pertains to the verification of the financial statements of the ICC and the Trust Fund for Victims, as well as the examination of the management of the Permanent Premises Project. The additional audits requested by the Assembly in Resolution ICC-ASP/13/Res.6 therefore fell under the scope of the external

auditor. Pursuant to the engagement letter dated 17 January 2013, any additional verification likely to result in additional costs must be decided by the ASP after obtaining prior approval on the terms and conditions, including the amount of the additional costs required.

9. The professional standards on auditing, especially standards ISA 200 and 210, imply that for any new mandate entrusted to an auditor, the auditee and the auditor must agree on the terms of the engagement. The requests of the ASP therefore had to be subject to a new letter of engagement for the purpose of clarifying the expectations of the State Parties and examining the feasibility of these additional auditing works.

10. The ASP and the external auditor have agreed, in a letter of engagement dated

11. 16 October 2015, that the audit of the cost overruns of the permanent premises project shall be conducted during the normal, intermediate audit engagement from 11 to 22 January 2016, after the end of the construction works and the relocation of the departments to their new premises.

12. On the other hand, insofar as the Assembly must take a decision on the €6M funding during its fourteenth session, from 18 to 26 November 2015, the external auditor has accepted, in this letter of engagement, to provide on an urgent basis, before 13 November, an initial analysis on the adequate level of the cash and the risks that may result from their reduction.

13. The method used by the external audit team consisted of examining a series of intermediate questions that were required in order to be capable of giving a response to the question asked by the Assembly of State Parties on the adequate level of the cash and on the risks related to their reduction. The audit team had the following intermediate objectives:

a) **To identify the pertinent aggregate for measuring the cash reserves;**

b) **To define under what conditions and according to what criteria can a cash be considered, in principle, to be appropriate;**

c) **To examine whether the forecasts of change in the cash of the ICC show an appropriate level with respect to the previously defined criteria;**

d) **To analyse the soundness of the forecasts of the ICC and, if needed, to correct them;**

e) **In case there is a risk of the cash being insufficient, to suggest possible measures for funding.**

III. List of recommendations

Short term

Recommendation 1: Use the Working Capital Fund and the Contingency Fund in order to mitigate temporary situations of insufficiency of cash while awaiting the implementation of a more sustainable funding mechanism.

Recommendation 2: In addition to the temporary use of the cash reserves, negotiate the opening of a credit line with the banks, in order to have an additional insurance in case of temporary difficulties resulting from delays in contributions, which cannot be covered by the Working Capital Fund any longer. Upon establishment of the credit line the contingency Fund could continue to be utilized as prescribed by the Financial Regulations and Rules.

Medium term

Recommendation 3: Adopt a plan for financing the employee benefits liabilities in order to smooth charges related to these liabilities, which are likely to increase in the future. Further work will have to be carried out to determine if the establishment of a reserve would be appropriate and what should be its level.

Recommendation 4: Improve the predictability of the receipt of the contributions to be earned in the ongoing year, via recovery planning and by setting up a payment plan, negotiated with every State Party in arrears.

Recommendation 5: Set up debt settlement plans in order to make States, which have been debtors for several years, more accountable.

Recommendation 6: If there is no recovery of arrears, implement the sanctions given in the Financial Regulations and Rules.

Recommendation 7: Examine how to better adapt the rhythm of disbursements according to the cash available with the ICC.

Recommendation 8: Intensify the practice of revising the programme budget during the year, in order to control costs still to be engaged with respect to the cashed contributions, enable reprioritization of activities and absorb unforeseen expenditures.

IV. Observations and recommendations

1. The concept of cash reserves

1.1. Equity capital

14. The equity capital of the ICC is shown in the financial statements via the line net assets/equity. Obtained by the total assets minus debts, it constitutes what is owned by the State Parties. The equity capital is made up of the capital set aside for the Working Capital Fund and the Contingency Fund, as well as the cumulative surplus on the other categories of funds that track the activities of the ICC.

15. As of 31 December 2014, the equity capital of the ICC amounted to €82.288M, of which

16. €36.812M was the accounting surplus of the year[2]. The intermediate balance of the ICC as of 30 September 2015 established the amount of the equity capital at €104.125M.

17. As a whole, the equity capital cannot be assimilated into the cash reserves of the ICC. A part of this capital is used for funding the fixed assets of the Organisation. Only the part not allocated to the funding of assets is effectively liquid.

1.2. Cash and cash equivalents

18. The cash and cash equivalents are an aggregate that is more pertinent in measuring the cash reserves of the ICC. The cash and cash equivalents together represent the immediately available liquidity owned by the Organisation in cash on hand or in the bank (cash on hand, bank balance, post office accounts). The cash and cash equivalents also include short-term investments[3]. The cash and cash equivalents item represented €56.693M as of 31 December 2014 and €33.619M as at 30 September 2015.

19. The cash and cash equivalents of the Organisation are distributed in the five Funds that comprise the equity capital of the ICC. Three funds track the general activity of the ICC: the General Fund, the Working Capital Fund and the Contingency Fund; the other operations are tracked on special funds: the Permanent Premises Fund and the Trust Funds.

20. Strictly speaking, all of these cash and cash equivalents cannot be assimilated into a reserve. Only the Working Capital Fund and the Contingency Fund legally have the status of mandatory reserves. The other amounts of cash and cash equivalents are cumulative balances resulting from surplus and are not mandatory in nature.

[2] This suplus is not equivalent to the cash surplus to be returned to State Parties. Calculated on an accrual basis, it is the difference between Revenue and Expenses in the annual statement of financial performance.

[3] Note 2.13 of the financial statements 2014: *"Cash and cash equivalents are held at nominal value and comprise cash on hand, funds held in current accounts, interest-bearing bank accounts and time deposits with a maturity of less than three months"*.

21. The use of the cash available in these balances and reserves is subject to restrictions depending on the rules specific to each fund[4].

22. The details of the cash and cash equivalents situation of the ICC as of 31 December 2014 and as of 30 September 2015 are summarised in the following table:

Table 1: Situation of the cash and cash equivalents of the ICC (in million euros)

		31-12-2014	*30-09-2015*	*Total 2014*	*Total 2015*
General activities	General Fund	13.228	16.154	28.015	31.059
	Working Capital	7.286	7.404		
	Contingency Fund	7.500	7.500		
Special activities	Permanent Premises Fund	27.383	0.572	28.677	2.559
	Special Funds	1.294	1.987		
Total[5]		**56.693**	**33.619**	**56.693**	**33.619**

Source: External auditor, pursuant to the financial statements 2014 and the general balance provided by the ICC on 30 September 2015.

2. Conditions for an adequate level of cash

23. The adequate level for the reserves and balances of the cash simultaneously depends on the legal constraints and financial constraints that oblige an Organisation to maintain them at a certain level at all times.

24. The legal constraints are set by the rules governing the use of the cash placed on each of the funds of the ICC. The financial constraints depend on the ICC's level of requirement of the Working Capital Fund.

2.1. Legal constraints

25. The rules governing the use of the funds, and therefore the related cash, limit their use and their minimum level in certain cases.

– The balance on the General Fund seems to be the most legally appropriate to be debited from, for the objective of the ASP. The General Fund has been established pursuant to Article 6.1 of the Financial Regulations and Rules for recording the ordinary expenses of the ICC. This fund is financed via the contributions of the Member States, miscellaneous income and the advances made from the Working Capital Fund for paying expenses.

– Within the balance of the General Fund, the ICC has created a reserve for the employee benefits liabilities (Funding set aside for Employee Benefit Liabilities, or the "EBL" reserve), which amounted to €11.227M as of 31 December 2014 and to €8.663M as of 30 September 2015. For each year, the ICC recognised the annual leave entitlements constituted by its employees due to their services rendered as well as the repatriation entitlements, and recorded them in its liabilities. The purpose of these funds was the payment of those liabilities when they become due at the time when an employee leaves the ICC. In order to fund these future obligations, the ICC deducted the obligations accrued each year from the surplus paid back to the State Parties. The payment of this liability in its whole, in the case every employee would leave the ICC at the same time, being highly improbable, the constitution of this reserve was stopped.

– The Working Capital Fund was established by the Assembly of State Parties pursuant to Article 6.2 of the Financial Regulations and Rules of the ICC so that the Court has funds that allow it "to meet short term liquidity problems pending receipts

[4] Note 3 of the financial statements 2014: "*cash and cash equivalents contain restrictions on their availability for use depending upon the Fund to which they relate (see note 25 for segment information)*"
[5] The amounts of the intermediate balances have been rounded off and only the totals are valid.

of assessed contributions”. The funding of the permanent premises project overruns is a structural question and not a short-term question related to delays in receiving contributions. Using the Working Capital Fund will therefore require modifying the Financial Regulations and Rules of the Organisation. The Working Capital Fund is an immediately available cash reserve, distinct from the accounting concept of Working Capital. Its amount, constantly growing since 2002, was fixed, from 2007, at €7,405,983 (i.e. €7.406M) by the Assembly of State Parties (Resolution ICC-ASP/12/Res.1). The Working Capital Fund is funded by advances, which remain the property of the States Parties and which are fixed pursuant to the contributions scale of assessment. The sums debited as advances for funding the appropriations opened in the budget are reimbursed as soon as the revenue becomes available for this purpose (Article 6.2 of the Financial Regulations and Rules). The payments made by one State Party are first credited from its account to the Working Capital Fund, with the surplus being deducted from the contributions due in the order they were presented for collection (Article 5.8 of the Financial Regulations and Rules).

– The Contingency Fund complies with the principle of specification provided in Article 6.5 of the Financial Regulations and Rules of the ICC. According to this Article, “the competent authority must clearly define the purpose and limits of each Trust Funds, reserve account and special account”. This immediately available cash reserve was created by the Assembly of State Parties (Resolution ICC/ASP/3/Res.4) in order to allow the Court to pay the expenses that cannot be predicted when the budget is adopted and which concern either a new situation created by a decision of the Prosecutor to open an investigation, or a new development in an old investigation, or an unforeseen meeting of the Assembly of State Parties[6]. The Assembly of State Parties set the minimum amount of this reserve to €7M (ICC/ASP/8/Res.5) and contributed to this amount again with €0.5M in 2013 (ICC/ASP/11/Res.1.). Its purpose does not seem to be able to authorise any spending related to the unexpected cost overruns of the permanent premises project. Moreover, in its Resolution dated 25 June 2015, the ASP banned funding being obtained from debiting this reserve.

– The balance of the Trust Funds concerns, pursuant to Article 6.5 of the Financial Regulations and Rules, various activities fully funded by voluntary contributions. The Trust Funds, created by the Registrar, correspond to a principle of specification that does not authorise the funding of expenses other than those for which the contributions were paid. The unused balance of the voluntary contributions could theoretically be used by the Court, provided that this is mentioned in the agreement pursuant to which the contributions were paid or if the agreement was modified in this sense (Rule 106.1 of the Financial Regulations). However, the use of this fund is strictly limited by the donors, especially the European Commission.

– The Fund for the Permanent Premises Project was created to fund the execution of the new ICC Headquarters project. However, according to the predictions of the ICC, its cash balance will be zero starting from October 2015. This Fund is supplied via a loan from the Netherlands, with an upper limit of €200M, the mandatory contributions of the State Parties calculated according to the applicable scale, voluntary contributions and any other miscellaneous resource decided by the ASP (Resolution ICC/ASP/7/Res.1.).

26. In legal terms, the balance of the General Fund, which includes the employee benefits liabilities Fund, is the only fund that can be used immediately for a withdrawal. The use of the Working Capital Fund will require a modification in order to authorize the funding of the permanent premises overruns[7]. The Trust Funds offer a theoretical room for manoeuvre, but require the approval of the contributors. The use of the Contingency Fund, the statutory level of which is €7.5M, has been prohibited by the ASP.

[6] *“There shall be established a contingency fund to ensure that the Court can meet: (a) Costs associated with an unforeseen situation following a decision by the Prosecutor to open an investigation; or (b) Unavoidable expenses for developments in existing situations that could not be foreseen or could not be accurately estimated at the time of adoption of the budget; or (c) Costs associated with an unforeseen meeting of the Assembly of States Parties”.*

[7] ICC observes that “changing the FRR doesn’t seem to be necessary for a one off utilization”. However it would be advisable to request an analysis by the ICC Legal Advisory Section.

2.2. Financial constraints

27. To understand the financial constraints related to the cash and cash equivalents, one must rely on the accounting concept of a Working Capital. The accounting concept of Working Capital must be differentiated from the legal concept of Working Capital Fund, an immediately available cash instrument established by the Financial Regulations and Rules.

28. From the financial and accounting points of view, the total net Working Capital represents the surplus of stable capital (equity and long-term debts) on assets meant for sustainable use (fixed assets). Its purpose is to finance the Working Capital requirements, which designates the cash requirements made necessary by the activity of the organisation. An organisation receives sums of money, mainly contributions, and pays expenses (disbursements). The Working Capital requirement represents sums of money required for facing the discrepancy between the receipts and the disbursements. Between when an entity pays the supplier and when it receives money from the customers (in this case, the contributions of the State Parties), there is usually a gap of time. This time creates the Working Capital requirement.

29. The accounting concept of Working Capital requirement is used to analyse the trends of change in the cash, and their minimum required level. In fact, the higher the receivables, for example, those from the Member States, are with respect to the debts, the greater is the Working Capital requirement and the lower will be the cash (the receipts will reduce): in the case of an international organisation, if the Member States are late in paying their mandatory contributions, this requirement increases and the cash is used to pay off the debts. Conversely, the lower the receivables from the Member States are with respect to the debts, the lesser is the Working Capital requirement and the greater will be the cash. In the case of an international organisation, if the Member States are prompt in paying their assessed contributions, this requirement decreases and the cash is used less often.

30. The objective of a cash-flow forecast is to ensure that the cash is, at all times, at least equal to the Working Capital requirement. With a proactive approach, the cash and cash equivalents must at least be at the level that will allow funding the Working Capital requirement and at least zero after financing the Working Capital requirement. If the cash is insufficient, there will be a negative cash flow position: the entity will have to turn to banks to obtain short-term loans or to the States to obtain a special contribution. In order to ascertain whether the cash is at an adequate level, the cash flow forecast must therefore compare the cash that can be mobilised to the Working Capital requirement.

3. Cash flow forecasts

31. The final objective of the external auditor's engagement was to examine the change in the cash flows, taking into account the impact of the additional expenses resulting from the permanent premises project, and to compare this situation to what should be the adequate level of the cash reserves.

3.1. Assumptions of spending related to the Permanent Premises Project

32. The cash flow forecasts, formulated on 30 September 2015 by the ICC, integrated additional expenses amounting to €9.4M. The source of this amount is detailed in the following table.

Table 2: Total additional disbursements under the Permanent Premises Project with respect to the initial cover of €190M (in million euros)

Additional authorised budget	*November 2013*	*December 2014*	*June 2015*	*Total*
Without sharing[8]	5.7	4.3	6	16
With sharing	5.7	4.3	4	14
Already financed	4.5	0	0	4.5
To be financed without sharing	**1.2**	**4.3**	**6**	**11.5**
To be financed with sharing	**1.2**	**4.3**	**4**	**9.5**
Authorised mode of financing	**Cash surplus of 2012-2014**	**Cash surplus of 2014 and following**	**EBL and WCF funds**	

Source: External auditor, as per the ICC data.

33. This projected amount to be disbursed was calculated in the following manner:

– €1.233M: All of the construction and transition costs were estimated for a cover of €190M (ICC/ASP/6/Res.1), which was to be funded by either using the loan granted by the host State up to a limit of €200M, or by the lump-sum payments of the State Parties. In November 2013, this cover was changed to €195.7M (Resolution ICC/ASP/12/Res.2). The State Parties decided that this additional budget of €5.7M was to be funded only by the cash surplus in the years 2012 to 2014. The Assembly of State Parties then decided that advances to the Permanent Premises Project budget could be made by withdrawing them from the cash reserves of the ICC while waiting for surplus to become available. These advances must, under all circumstances, remain temporary, stay within a limited amount and have a repayment schedule (Resolution ICC-ASP/12/Res.2, para 17). In April 2014, the cash surplus in 2012, of €4.467 M was therefore transferred, once determined to be final, for funding the Permanent Premises Project, thereby increasing the project funding to €194.47M. An amount of €1.233M remains to be funded. Since the ICC experienced a final cash deficit of €2.269M in 2013, no additional surplus could be allocated to the funding of the project.

– €4.3M: In December 2014, the budget was set to €200M (Resolution ICC-ASP/13/Res.3), which represented an increase of €4.3M. No provision was made in the Resolution to finance this new increase. In June 2015, the ASP then provided (Article 14 of Resolution ICC-ASP/13/Res.3) that the cash surplus of 2014 and the following years could be used to finance this additional budget. However, the cash surplus forecast of 2014, which will only be definitely known in 2016, shows a deficit of €5.794M.

– €6 M: In June 2015, the budget was once again increased by €6M, reaching €206M (Resolution ICC-ASP/13/Res.3), or €204M in case €1.993M is not disbursed if the mechanism of sharing costs with the constructor, provided in the contract, produces the desired effects. In its paragraph 3, the ASP decided that the budgetary envelope thus authorised of €6M or €4M shall be funded only by reducing the authorised level of the Fund used for the engagements related to employee benefits as well as the Working Capital, and under no circumstances will it impact the Contingency Fund. The contract sharing mechanism provides that any savings made with respect to the prices guaranteed for the execution of the project will be shared between the contractor (the ICC) and the constructor (the company Courtys). This is why the request of the Project Director, formulated in 2015, referred to two scenarios, each having a possibility of reduction due to the sharing mechanism. In the worst-case scenario, the increase will be of €8,808,725, a sum out of which €1,993,524 cannot be spent, i.e. a net amount of €6,815,201 (Resolution ICC/ASP/13/Res.6). In the best-case scenario, the increase will be of €4,572,667, a sum out of which €3,409,952 cannot be spent, i.e. a net amount of €1,162,715. In reply, in the

[8] The sharing mechanism provides that any savings made with respect to the prices guaranteed for the execution of the project will be shared between the contractor (the ICC) and the constructor (the Company Courtys).

Resolution of June 2015, the ASP opted for a compromise, with a maximum amount of €6M and possible savings, taking into account the sharing mechanism, of €1.993M, i.e. a net amount of €4M.

34. The amount of the overruns to be funded shall therefore be between €9.5M and €11.5M. The cash flow forecast table shows additional disbursements of €9.420M, which is consistent with the scenario of an "optimistic" budget of €204M. On the date of the audit, i.e. close to four months after the forecasts reflected in the resolution dated 25 June, the ICC estimated that it was closer to realising this scenario.

35. The external auditor examined the forecasted changes in the cash flows, with the prediction including the mobilisation of the cash reserves of the ICC as approved by the ASP.

3.2. Projected cash situation with use of reserves

36. The table below provides a cash flow statement and estimate as of 30 September 2015. This estimate takes into account the use of the two cash reserves targeted by the ASP in its Resolution of 25 June, namely the reserve for funding employee benefits liabilities and the Working Capital Fund. According to the ASP, the Contingency Fund should not, under any circumstances, be used for this purpose.

37. In this estimate, cash balances (net cash requirement/surplus column) appear once the reserve for funding employee benefits liabilities (EBL reserve) has been exhausted and once the Working Capital Fund has been used, depending on what is required.

Table 3: cash statement and estimate for 2015 and 2016 (in euros)

		Encashments	Disbursements	Working capital requirement/ surplus	Regular budget cash	Net cash requirement/surplus	Extra-budgetary cash	Overall net cash requirement/surplus
		1	2	3	4	5	6	7
2015	January	15 947 470	9 920 661	6 026 809	28 015 217	34 042 026	32 976 050	67 018 076
	February	32 308 860	12 117 013	20 191 847	34 042 026	54 233 873	27 710 477	81 944 350
	March	15 156 005	9 812 675	5 343 330	54 233 873	59 577 203	31 737 257	91 314 460
	April	19 900 136	11 962 419	7 937 717	59 577 203	67 514 920	22 422 175	89 937 095
	May	1 378 197	10 655 322	-9 277 125	67 514 920	58 237 795	15 400 418	73 638 213
	June	10 052 621	10 278 811	-226 190	58 237 795	58 011 605	12 074 663	70 086 268
	July	977 024	10 638 191	-9 661 167	58 011 605	48 350 438	10 222 514	58 572 952
	August	145 294	10 709 485	-10 564 191	48 350 438	37 786 247	8 870 456	46 656 703
	September	9 394 832	16 121 796	-6 726 963	37 786 247	31 059 284	2 559 855	33 619 139
	October	15 880 092	13 605 763	2 274 329	31 059 284	33 333 612	1 987 349	35 320 961
	November	4 379 915	9 074 352	-4 694 437	33 333 612	28 639 175	1 987 349	30 626 524
	December	805 000	17 074 379	-16 269 379	28 639 175	12 369 795	1 987 349	14 357 144
2016	January	18 486 767	12 425 384	6 061 383	12 369 795	18 431 178	1 987 349	20 418 527
	February	35 969 376	13 753 584	22 215 792	18 431 178	40 646 970	1 987 349	42 634 319
	March	16 858 705	11 480 008	5 378 696	40 646 970	46 025 667	1 987 349	48 013 016
	April	22 136 091	11 480 008	10 656 083	46 025 667	56 681 749	1 987 349	58 669 098
	May	1 529 231	11 480 008	-9 950 778	56 681 749	46 730 972	4 127 724	50 858 696
	June	10 388 467	12 023 977	-1 635 511	46 730 972	45 095 461	1 987 349	47 082 810
	July	1 003 941	11 480 008	-10 476 067	45 095 461	34 619 394	1 987 349	36 606 743
	August	137 925	11 480 008	-11 342 084	34 619 394	23 277 310	1 987 349	25 264 659
	September	8 964 265	11 480 008	-2 515 743	23 277 310	20 761 567	1 987 349	22 748 916
	October	17 678 491	12 469 008	5 209 483	20 761 567	25 971 050	1 987 349	27 958 399
	November	4 875 934	11 480 008	-6 604 074	25 971 050	19 366 976	1 987 349	21 354 325
	December	-	11 480 008	-11 480 008	19 366 976	7 886 968	1 987 349	9 874 317

Source: External auditor according to cash flow forecast made by the ICC on 30 September 2015.

38. Column 3, 'Working capital requirement/surplus' records the difference between encashments and disbursements. If disbursements exceed encashments there is a working capital shortage (negative figures). In the opposite case there is a surplus. Column 4, 'Regular budget cash', states the ICC cash available as regards funds relating to general expenditure (General Fund, Working Capital Fund and Contingency Fund) for potentially financing the working capital requirement. Column 5, 'Net cash requirement/surplus', states what cash remains after columns 3 and 4 have been added. If the ICC achieves a working capital surplus, this is then added to the cash and the net cash surplus increases. If it identifies a working capital requirement, this is then deducted from the cash and the net cash surplus decreases.

a) Changes in the global situation

39. Generally, once the reserves have been used and provided that the estimate is valid, **the ICC should not experience any periods of cash shortage**, but it would experience a great deal of fragility in terms of the Working Capital Fund.

40. The cash is spread over the surplus period. In those months where the difference between encashments and disbursements results in a working capital requirement (negative figures in the Working capital requirement/surplus column), this requirement would still be covered by the cash available in the ICC's general funds (Regular budget cash column).

41. In December 2015, for example, the working capital requirement should be €16.2M. With the cash available from general funds reaching €28.6M, it would therefore be possible to finance this requirement. The net cash balance, however, would drop to €12.4M, representing barely a month's expenditure for the ICC or a little over with total cash amounting to €14.3M, taking into account cash from Trust Funds. However restrictions on using the balances of Trust Funds mean that it is not possible to consider this balance as a credible financing instrument. The sum of the cash in the regular budget would therefore be less than the cumulative cap of €14.9M from the two statutory reserves consisting of the Working Capital Fund (€7.4M) and the Contingency Fund (€7.5M). **This means that the cap on the Working Capital Fund would in fact decrease to €4.8M (12.3 – 7.5),** since the Contingency Fund cannot be used in the eyes of the ASP and the reserve for employee benefits would already have been entirely liquidated.

42. Likewise, in December 2016, the working capital requirement of €11.4M would be financed by cash from general funds amounting to €19.3M, taking the net cash balance to €7.8M (or even €9.8M taking into account Trust Funds, which are not a credible financing instrument).The ICC's cash requirements would also be met in December 2016 but the statutory reserves accumulated would amount to €7.8M, meaning that the cap on the Working Capital Fund would be lowered to €0.3M (7.8 – 7.5).

43. The Working Capital Fund will have been virtually drained and the reserve for funding employee benefits itself entirely exhausted. It should be noted that this reserve of €11.2M at the end of June 2015 had decreased to only €8.6M by 30 September and only part of this amount can only be used since the rest has been set aside for the payment of employee entitlements payable upon departure, in accordance with its initial purpose.

b) The decrease in the Working Capital Fund

44. With this in mind, the issue is knowing whether the decrease in the Working Capital Fund would be of an acceptable degree. In the hypotheses outlined above regarding financing by means of the Working Capital Fund, the cap on the reserve would decrease, following the modification of the Financial Regulations and the ASP's decision to authorize a decrease in the reserve, to €4.8M in December 2015, representing 12 days' expenditure, and to €0.3M in December 2016, representing less than one day's expenditure[9]. The ASP would have to agree to risk seeing its Working Capital Fund reduced to virtually zero by December 2016.

45. As was the case with the Contingency Fund, the Working Capital Fund was created to help deal with temporary cash problems. Allowing it to fall to an insufficient level could

[9] €12M average monthly expenditure/30 = €0.4M expenditure per day

prove costly for the Organisation, which could find its reputation on the line or need to find significant funds to finance expenditure as a matter of urgency. It is therefore important that an organisation set a minimum level of reserves that would enable it to cover any unexpected expenditure at any time. The appropriate prudent level can be determined in a number of ways.

Retrospectively

46. There is one primary observation to be made: a very low proportion of the reserves have been used in the recent past. Retrospectively, a withdrawal from one of the two reserves would not appear likely to endanger the ICC in the short term.

47. By 30 September 2015, no disbursements had been recorded regarding the Working Capital Fund, with the exception of a withdrawal of €113,087 in 2013. Since its establishment in 2005, the Contingency Fund, meanwhile, had been used only twice, in 2010, with a withdrawal of €412,000, and in 2011, with a withdrawal of €4,318,276.

Comparatively

48. The United Nations Joint Inspection Unit (JIU) reiterated in a 2007 Report (JIU/REP/2007/3) that the Working Capital Fund should not, in principle, amount to more than a twelfth of the total regular budget for one year. The average observed within the United Nations system is as follows:

Table 4: UN Working Capital Funds as a percentage of the annual budget

%	*UNESCO*	*AIEA*	*FAO*	*ICAO*	*ILO*	*IMO*	*WMO*	*WHO*	*WIPO*	*UNIDO*	*UN*	*Average*
1989	8.6	1	7	7	7	14	10	3	15	7	11	8
2003	9.2	7	8	11	10	9.5	8	7	3	1	7	8
2012	9.5	5	5	7	10	6	11	7	3	9	6	7

Source: JIU for 1989 and 2003; Cour des comptes survey for 2012.

49. The high degrees of variation observed over time for each of these eleven institutions are such that the stability of the overall average is of limited significance, and the factors at play also vary greatly. It is at least evident that the ICC, with a Working Capital Fund ratio of 4.8% (€7.404M compared to the budget proposal for the 2016 financial year, €153.32M), falls below the average.

50. The inadequacy of the ICC's Working Capital Fund could, however, be qualified since, as the Joint Inspection Unit declared in a 2007 Report[10], whilst Working Capital Funds were originally intended solely to finance regular budget expenditure, whilst waiting to receive the assessed contributions recovered (as is the case of the ICC's Working Capital Fund), its scope has since been extended to include the financing of unexpected expenses and other authorised expenses. In the case of the ICC, taking into account the consolidated sum of the two reserves - the Working Capital Fund and the Contingency Fund- the prudential ratio between the reserve and the annual budget would reach 9.72%, putting it above the average. At €14.907M, the ICC's global reserve would place it in the upper bracket of the international organisations in the selection, but this comparison, provided that it is relevant[11], would not indicate that the level of the reserve is exaggerated or that the ICC is being overly cautious.

With regard to the difference between reserves and expenditure

51. It is, in fact, this ratio that represents the greatest need for caution. According to the ICC, the value of the Working Capital Fund is believed to represent around two weeks'

[10] United Nations Joint Inspection Unit, re-examination of the World Meteorological Organization's working capital, Geneva, 2007
[11] Management emphasized that, given the unpredictability of the judicial activities, the Contingency Fund is a pre-requisite of the ICC

expenditure as regards the current budget (Source: Report CBF ICC-ASP-14-15). The monthly average level of disbursement was €11M in 2015 and is expected to reach €12M in 2016 according to the ICC's cash flow plan, which takes the Working Capital Fund to slightly more than two weeks' expenditure. This amount would appear to be rather low in terms of security. The consolidated sum of the two reserves, amounting to €14.9M, would, however, take this ratio just over a month's worth of expenditure (a month's expenditure amounts to the 2016 regular budget of €153.32M/12 = €12.77M), that is slightly over the benchmark of one month's expenditure referred to above.

With regard to context

52. In terms of encashments, the international situation does not make for an optimistic outlook with regards to the recovery of contributions over the coming years. Over the course of recent years, as a result of the economic crisis, the Court has observed a growing trend among States of paying in instalments and delaying full payment of the contributions due at the start of the year, that is 30 days after the date on which the invoice is issued by the ICC. The assessment scale for 2016-2018 has been calculated based on the 2013-2015 macro-economic situation and many countries are seeing an increase in their contribution whilst also experiencing a slowdown in growth[12].

53. In terms of disbursements, the ICC will need to take new mandatory expenses into account. The ICC will notably have to deal with the increase in charges associated with maintaining and operating its new permanent premises in relation to its current costs[13]. Furthermore, as of 2017, the ICC will have to cover an annual capital and interest repayment charge of €3.6M stemming from the host State loan for the construction of permanent premises. As a reminder, the external auditor also reiterates the fact that the ICC will also eventually have to worry about introducing a long-term plan for financing the end-of-service liabilities owed to retiring employees. Whilst such benefits do not have to be paid immediately, it would be good management to gradually introduce a method of funding in order to smooth such charges, which are likely to increase exponentially.

54. To summarise, then, whilst the ICC may appear not to have to deal with any cash shortages (based on the information available to the external auditor), **the value of the Working Capital Fund is at risk of dropping to alarming levels in terms of financial security.** In light of all of these factors combined, it would not be advisable to allow its value to drop, other than very briefly, below its current threshold of €7.4M.

3.3. Projected cash situation without using the Working Capital Fund

55. The external auditor has examined the situation that would arise as a result of taking into account additional expenditure relating to the permanent premises project without using the Working Capital Fund or the Contingency Fund (the purpose of which is adapted by the resolution by which it was created and of which the ASP reasserted the intangible nature in its resolution of 25 June 2015).

56. The ICC's cash situation would be exposed to a significant risk of shortage.

57. The revised table following the cash reserves sterilisation operation reveals the following situation:

[12] *cf.* Appendix 1: Cash forecasts linked to contributions

[13] See notably ICC report ICC-ASP/12/7.

Table 5: cash situation and forecast for 2015 and 2016 following the neutralisation of the Working Capital Fund (in euros)

		Encashments	Disbursements	Working capital requirement/ surplus	Regular budget cash	Net cash requirement/surplus	Extra-budgetary cash	Overall net cash requirement/surplus
		1	2	3	4	5	6	7
2015	January	15 947 470	9 920 661	6 026 809	13 228 744	19 255 553	32 976 050	52 231 603
	February	32 308 860	12 117 013	20 191 847	19 255 557	39 447 404	27 710 477	67 157 881
	March	15 156 005	9 812 675	5 343 330	39 447 404	44 790 734	31 737 257	76 527 991
	April	19 900 136	11 962 419	7 937 717	44 790 734	52 728 451	22 422 175	75 150 626
	May	1 378 197	10 655 322	-9 277 125	52 609 925	43 332 800	15 400 418	58 733 218
	June	10 052 621	10 278 811	-226 190	43 332 800	43 106 610	12 074 663	55 181 273
	July	977 024	10 638 191	-9 661 167	43 106 610	33 445 443	10 222 514	43 667 957
	August	145 294	10 709 485	-10 564 191	33 445 443	22 881 252	8 870 456	31 751 708
	September	9 394 832	16 121 796	-6 726 963	22 881 252	16 154 289	2 559 855	18 714 144
	October	15 880 092	13 605 763	2 274 329	16 154 289	18 428 617	1 987 349	20 415 966
	November	4 379 915	9 074 352	-4 694 437	18 428 617	13 734 180	1 987 349	15 721 529
	December	805 000	17 074 379	-16 269 379	13 734 180	-2 535 200	1 987 349	-547 851
2016	January	18 486 767	12 425 384	6 061 383	-2 535 200	3 526 183	1 987 349	5 513 532
	February	35 969 376	13 753 584	22 215 792	3 526 183	25 741 975	1 987 349	27 729 324
	March	16 858 705	11 480 008	5 378 696	25 741 975	31 120 672	1 987 349	33 108 021
	April	22 136 091	11 480 008	10 656 083	31 120 672	41 776 754	1 987 349	43 764 103
	May	1 529 231	11 480 008	-9 950 778	41 776 754	31 825 977	4 127 724	35 953 701
	June	10 388 467	12 023 977	-1 635 511	31 825 977	30 190 466	1 987 349	32 177 815
	July	1 003 941	11 480 008	-10 476 067	30 190 466	19 714 399	1 987 349	21 701 748
	August	137 925	11 480 008	-11 342 084	19 714 399	8 372 315	1 987 349	10 359 664
	September	8 964 265	11 480 008	-2 515 743	8 372 315	5 856 572	1 987 349	7 843 921
	October	17 678 491	12 469 008	5 209 483	5 856 572	11 066 055	1 987 349	13 053 404
	November	4 875 934	11 480 008	-6 604 074	11 066 055	4 461 981	1 987 349	6 449 330
	December	-	11 480 008	-11 480 008	4 461 981	-7 018 027	1 987 349	-5 030 678

Source: External auditor, according to ICC estimations.

58. This revised table reveals two instances of cash shortages following 'sterilisation', that is the withdrawal of the amount of cash in the Working Capital Fund and the Contingency from the 'Regular budget cash' column.

59. In December 2015, therefore, the working capital requirement should be €16.2M. The cash available in general funds would then be reduced to €13.7 (28.6 – 7.4 – 7.5). The net cash balance would no longer be €12.3M but rather -€2.5M.

60. In December 2016, the working capital requirement of €11.4M would be financed by cash from general funds amounting no longer to €19.3M but rather to €4.46M, taking the net cash balance to -€7M.

61. With this in mind, the issue lies in identifying alternative solutions that might be available to the ICC in order to deal with this cash flow pressures were it not to use its Working Capital Fund.

62. The external auditor initially considers it important to be cautious as regards the robustness of the cash forecasts presented by the ICC. Whilst they consider the future problems regarding cash reserves indicated in the forecast to be a likely event that presents a risk that it would be unwise to dismiss, certain hypotheses could, nevertheless, be further honed. This would help improve predictability in the future.

4. Weaknesses identified within the forecasts

4.1. Encashment of contributions

63. According to the Financial Regulations and Rules of the Organisation (Articles 5.5 and 5.6), States Parties are invoiced for contributions within 30 days following the Assembly of States Parties' decision approving the budget for the following year.

Contributions must then be paid within 30 days from the date on which the invoice is issued. However, this is not always the case, and most States Parties extend the schedule that they specify right throughout the following year.

64. A compared analysis of the cash flow forecasts made by the ICC, for example, indicates a significant difference between the provisional cash flow statement produced at the end of August 2015 and the same statement produced at the end of September 2015:

Table 6: cash flow forecast Quarter 4 of 2015 (in euros)

Estimate made in August	*Encashment*	*Sept-15*	*Oct-15*	*Nov-15*	*Dec-15*
		estimated	*estimated*	*estimated*	*estimated*
	Contributions	12,856,109	13,832,672	366,671	-
Estimate made in September	*Encashment*	*Sept-15*	*Oct-15*	*Nov-15*	*Dec-15*
		actual	*estimated*	*estimated*	*estimated*
	Contributions	8,052,348	15,880,092	4,379,915	-

Source: External auditor, according to ICC data

65. The main differences between the estimates made at the end of August and at the end of September are explained by the adjustment of the contributions received in September and in October 2015, which were different from those originally expected by the Organisation.

66. In view of the unpredictability of the behaviour of the States Parties, the ICC calculates the collection estimates based on the most recent historical data. Consequently, the estimates for the collection of contributions for financial year 2016 were mostly calculated based on the contribution payment percentages recorded in 2015 and the development in the total amount of contributions receivable in 2016.

67. The monthly contribution collection rates for financial year 2016 follow a distribution key identical to the rates for financial year 2015. As the collection rates were more satisfactory in the first half of 2015 compared to the first halves of 2013 and 2014, however, the assumptions made to construct the 2016 cash flow forecasts may be considered not to take the history of the 2013 and 2014 collection rates sufficiently into account.

68. The estimates presented in the document “cash flow forecasts for financial year 2016” may be criticised as they assume a similarity in the payment behaviour adopted by the States Parties in 2015 and in 2016, while this varies substantially from one year to the next.

69. Even if according to the ICC factors which affected the contributions payment in the recent year are more probable to continue, a prudent approach would have involved calculating the average monthly rates over the period 2013-2015, bearing in mind the lack of predictability of the dates of payment of the contribution by the States Parties.

4.2. Disbursements assumptions

70. In the projected cash flow statement drawn up at 30 September 2015, the disbursements budgeted in 2016 amount to €139,960,600. This budget was drafted following the revision of the contributions collections made by the Committee on Budget and Finance (CBF) in September 2015. In fact, the contribution rates fixed per Member State change every three years. The payment forecasts were brought into line with the level of contributions budgeted, i.e. with collections.

71. The disbursement forecasts were valued based on the following assumptions:

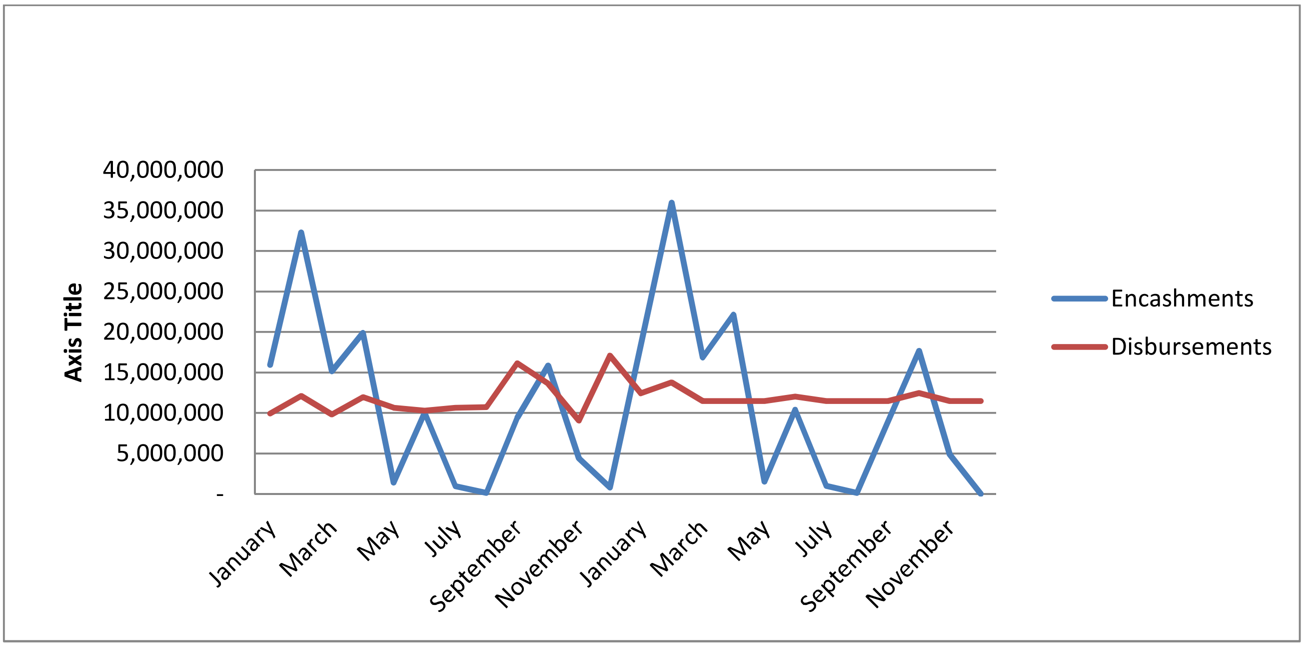
- the amount of disbursements forecast (€139,960,600) is equal to the budget of contributions fixed for 2016 by the Committee on Budget and Finance;

- the rate of disbursements is linear over the year. The total amount of disbursements was distributed over 12 months;

- these disbursements were adjusted just for the month of February 2016 by the payment of interest related to the loan granted by the Netherlands for an amount of €2.2M.

72. The graph below illustrates the assumption of linearity of expenses adopted to establish the cash flow forecasts.

Table 7: Comparative trend of actual and forecast income and expenditure (in €)



Source: External auditor, according to ICC data

73. In a prudent approach, the estimate of disbursements was established taking into account only the most significant disbursements that could be evaluated in a reliable manner. Staff costs account for a 70% share of these expenditures. The observed linearity of monthly disbursements was mainly due to staff costs.

74. Without questioning the reliability of assumptions used by the ICC, the evaluation of disbursements forecast could have been established on a more realistic basis, inspired by historical data on disbursements by lines of budgetary programmes, for example.

75. Assumptions on the development of certain items of expenses (wages, lawyers' expenses, etc.) could be adopted without systematically aligning expenses budgeted with the total amount of contributions budgeted over a year.

76. Likewise, certain assumptions have been dismissed in the projected cash flow plan. For example, exceptional expenses connected with the risk of conviction within the scope of disputes still pending in 2015 have not been incorporated into this projection. Current claims in these cases total €4M. We have not obtained estimates on the risk of disbursement connected with these disputes. These claims will be reviewed in more detail by the ICC at the end of the year and those which will be considered as probable will be provisioned.

4.3. Risks of correction

77. One should bear in mind that the forecasts examined by the external auditor, with regard to the encashment of contributions and payment of debts, may develop at any time, even where they show a trend. Consequently, a net cash deficit will become a surplus if contribution arrears are finally recovered.

78. For example, the expenses provided for with regard to the permanent premises project, in the projected cash flow plan submitted for the assignment of 26 to 30 October was estimated at a total of €9.4M, of which:

– €6.8M of disbursements for the year 2015;

– €2.5M of disbursements for the year 2016.

79. During the auditor’s participation, the projected cash flow plan connected with the permanent premises construction project was reviewed. The latest projected cash flow plan provided by the project monitoring team indicated the following payments:

– €2.4M of disbursements for the year 2015;

– €6.9M of disbursements for the year 2016.

80. This discrepancy in disbursements related to invoices that were due to be paid in October 2015 and January 2016 and not in September 2015 and December 2015. It resulted in improving the cash flow position at the end of 2015 by deferring major disbursements to January 2016.

81. Although this type of correction is inevitable and cannot be attributed to a real weakness in the forecasts, the external auditor questioned the total amount of the sums entered as funding set aside for employee benefits liabilities.

82. The funding set aside for employee benefits liabilities is intended to finance the restructuring plan for €3.5M, personnel expenses corresponding to paid leave and relocation allowances for €1.2M and the expenses connected with the Permanent Premises Project for €6.8M. It is entirely used by these three expense items in 2015.

83. The sums standing to “*other employees liabilities*” of €1.2M are already included in the disbursements made in respect of the 2015 general budget but have also been considered to be borne by the line “funding set aside for employee benefits liabilities”. This situation would amount to entering these expenses twice in the projected cash flow plan. The disbursements for the financial year 2015 would appear therefore overvalued by €1.2M in the projected cash flow plan.

84. The ICC explained that disbursements from the General Fund will not include

85. €1.2 million at the end of the year, as they will be disbursed from EBL funding. The reason why the cash flow projection does not show the explicit reduction in the General Fund’s disbursements for the amount of €1.2 million is that it is assumed that this reduction is utilized for other purposes. In fact, the General Fund will have to absorb Contingency Fund disbursements.

5. Alternative solutions to short-term financing

86. If the ICC’s inability to meet its expenses were confirmed (and the limits of the disbursement and encashment assumptions are not sufficient to dismiss this worst case scenario), the ICC will have to make alternative or complementary choices to the use of its Working Capital Fund, which may not remain at low levels other than in the very short term.

87. The external auditor considered it useful firstly to examine the measures that could be implemented in the short term to deal with a situation of a cash deficit, before dealing with the more long-term approaches, to reduce the working capital requirement structurally.

5.1. Use of internal resources

a) Contribution arrears

88. The external auditor recalls that the ICC has a claim in its accounts for €8.2M, consisting of arrears in assessed contributions payable by the States Parties for the years prior to 2015. The settlement of contribution arrears would constitute a lever for the

immediate improvement in the Organisation's cash flow position, enabling it to meet its difficulties[14].

89. The settlement of contribution arrears by several major contributors would simply enable it to improve its cash flow position by €7.8M[15]. The diplomatic efforts identified by the Organisation among the representations concerned should be strengthened, even if the chances of short-term recovery are limited. That is why the report will return to this subject when dealing with the medium- and long-term solutions.

b) Mutualisation of reserves

90. The aspects mentioned above on the prudent level of funds do not prompt us to recommend reducing the level of the Working Capital Fund other than in the very short term.

91. A certain mutualisation of the Contingency Fund and the Working Capital Fund could temporarily relax the financing constraint.

92. The two reserves together constitute more than one month's expenses and are not frequently applied to. Although it is hardly prudent in the auditor's opinion to reduce the limit of the Working Capital Fund below its statutory level of €7.4M, the ASP could contemplate making a temporary withdrawal from this fund, provided the difference between its new level and its statutory level is guaranteed by the Contingency Fund, which has not been used in the last three years and used only twice since 2005.

93. After financing the cash deficits, the two mutualised funds would amount to €12.3M in December 2015 and €7.9M in December 2016.

94. The degree of availability of the Contingency Fund appears to be reduced, however. In its Report on the work carried out during its 25th session (ICC-ASP/14/15), the ICC Committee on Budget and Finance stated that several requests for drawdown on the Contingency Fund had been submitted in 2015 totalling €6.263M. The CBF considers that, although a large part could be absorbed by the regular budget, it is highly likely that these requests will have a significant effect on the level of the fund.

95. On the other hand, a combined use of the amounts of the two funds could make it possible to deal with temporary situations of a cash deficit while awaiting the implementation of a more permanent mechanism such as a line of credit (see below).

c) Drawdown on Trust Funds

96. This solution offers hardly any prospects. An exemption for donors to the Trust Funds to use the balances would be very difficult to obtain, as these funds are subject to very strict rules on use. It is not even certain, in a few cases (European Commission Fund) that an exemption from these conditions could be negotiated.

97. Such a lever would also have a very limited impact. The use of the cash balance of Trust Funds, would enable the cash deficit to be partly made up in December 2015 (from -€2.5M to -€0.51M), but would only allow a small reduction in December 2016 (from -€7M to -€5M).

d) Use of budget surpluses

98. This solution is not viable in the short term. In a recommendation made in its report on the financial statements for the financial year 2014, the external auditor suggested that the budget surpluses should no longer be reimbursed to the State Parties systematically but entered in a reserve account to the credit of the States Parties, in order to provide a supplementary margin for the Organisation in terms of cash, to cover the more long-term requirements. The financing of the additional costs of the Permanent Premises Project could be included in this.

14 See Annex 2: recovery of contribution arrears.
15 Projected outstanding contribution at the end of 2015 is estimate by ICC to be around €16.6M

Reminder: calculation and use of the cash surplus:

According to the Financial Regulations and Rules of the ICC, the cash surplus is composed of "the balance of the appropriations remaining unobligated at the close of the financial period less any contributions made by States Parties relating to that financial year remaining unpaid" and of the unspent balance of appropriations at the end of a 12-month period following the end of the financial year for which they were opened and that remained available "to the extent that they were required to liquidate any outstanding legal obligations of the financial period", i.e. any debt regularly recorded (Article 4.5). On expiry of the 12-month period following the end of the financial year N, i.e. on expiry of N+1, the balance of the credits unused constitutes a surplus and any expense regularly incurred must be allocated to the expenses for the financial year in progress (Article 4.6). In short, surpluses from year N are composed of the unobligated credits for N as well as the credits opened for N and remaining open in N+1 as they have been obligated but not settled at the end of N+1. That is why one has to wait for the financial year N+2 to establish the exact amount of the budget surplus for year N.

These surpluses are apportioned among the States Parties according to the scale of contribution at the end of each financial year. As of 1 January in N+2 the budget surplus in relation to the financial year N is surrendered to the States Parties after settling any financing payable to the Contingency Fund, any advance payable to the Working Capital fund (the contribution required to reinstate the working capital to its statutory level), any contribution arrears and any contribution whose collection is enforced in N+2. It should be noted that the surplus is calculated by taking into account on the income side solely the contribution encashments and other related encashments (not the credits opened as reimbursing amounts not paid would not make sense) and on the expenditure side not only the charges paid but also the charges entered as debts in the liabilities (as these are expenses legally incurred that have to be paid). The budget surplus within the meaning of the financial rules is known as the "*cash surplus*" but it is actually a budget cash surplus. These surpluses are then deducted from the amounts of the contributions payable for N+2. Once the accounts for N+2 have been audited, the budget surplus becomes final (the provisional surplus for N is corrected in particular following the closure for N+1 of cancellations of credits remaining open at the end of N+1). Contribution surpluses are always repaid net of any contribution due. If the account of the State Party is in credit, the latter may request a reimbursement. Otherwise, the funds will remain to the credit of the account of the State Party and will be deducted from future amounts of contributions.

99. The use of surpluses not repaid to the States Parties would not exempt the States Parties from making a financial effort, as their net contributions would increase the budget surpluses not received by the due amount, which would no longer reduce gross contributions. In any event, the States Parties would still pay. The advantage of this approach would still be to allow a certain predictability in this financial effort and therefore greater acceptability. It would in fact be included in the maximum amount of the assessed contribution that each State Parties can expect to pay based on the official scale excluding rebates due to surpluses and not in an additional contribution.

100. This solution is only theoretical, as retrospectively no cash surplus can be used:

– the cash surplus for 2012, of €4.667M, was wholly assigned to financing the Permanent Premises Project, pursuant to Resolution ICC/ASP/12/Res. 2, to raising the project budget to €195.7M and to financing the additional cost with the cash surpluses of 2012 to 2014, which simply enabled part of the increase of €5.7M to be financed;

– in 2013, a cash deficit was recorded for a provisional amount of €4.644M, reduced to €2.269M following closure of the 2014 accounts. According to the Financial Regulations and Rules, a provisional deficit is still likely to be corrected after the closure of the following year by cancellations of credits or by the recovery of arrears;

– in 2014, a provisional deficit of €5.794M was recorded, whose actual level will only be known in 2016. Resolution ICC/ASP/13/Res 6, paragraph 14, grants approval for any surplus to be used to finance the Permanent Premises Project. The ICC stated that a surplus for 2014 could finally be released, for an amount of €1.3M. However such a surplus would not be available before the audit of the 2016 accounts.

5.2. Recourse to external resources

a) Arrangement of a credit line

101. If the Organisation were encountering specific cash difficulties, the ICC would be able to negotiate a credit line enabling it to honour its financial commitments.

102. According to the banks consulted, it would take between three and four weeks to set up a line of credit. This solution can therefore be established by the Organisation in the very short term, in addition to a drawdown on the Working Capital Fund. The cost of a line of credit is divided into fixed financial charges, linked to an annual interest rate calculated on the total amount of the line (i.e. the cost of opening the line), and variable financial charges, calculated by applying an interest rate to the amount of the drawdown and the period of use. In addition, the repayment of the capital made available must also be regarded as a future burden.

103. The arrangement of a credit line would make it possible to deal with any ICC cash deficits over a few days, without affecting the capital structure of the Organisation or requiring the States Parties to obtain a budget extension.

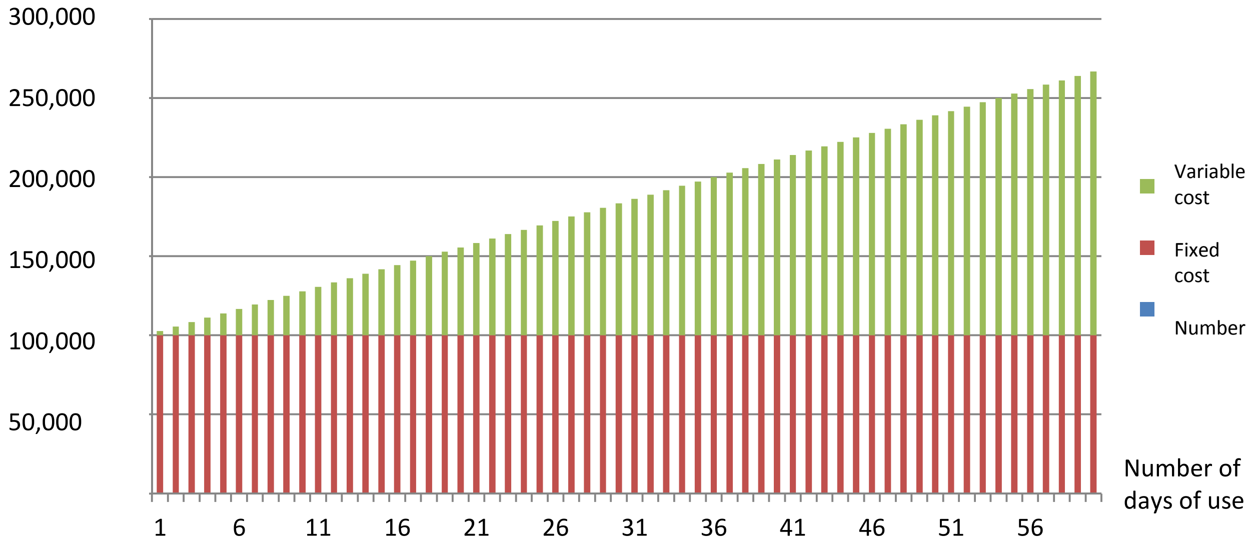
104. Taking the most pessimistic assumptions into account (fixed rate of 1%, variable rate of 10%, drawdown of €10M, 60 days of drawdown on line of credit over one year), the use of a credit line would constitute a cost for the Organisation equal to

105. €266,667, i.e. 0.19% of the total amount of the contributions budgeted for the financial year 2016[16].

106. This amount could clearly be altered depending on the number of days of use of the credit line over the year. If the ICC did not encounter any cash deficit, the annual cost of a cash line of €10M opened but not used would be €100,000 at the most. This cost would in some way be the cost of the insurance arranged by the States Parties in return for the use of the Working Capital Fund.

107. The cost of the drawdown on a cash line over a period of 1 to 60 days may be represented as follows:

Table 8: Development of maximum costs of a line of credit of €10M over a period of 1 to 60 days (in euros)



Source: External auditor

[16] See Annex 3: Cost scenarios.

b) Overdrafts

108. Among all the solutions contemplated to improve the cash balances, recourse to a bank overdraft is not a solution that is recommended.

109. The financial rules of the ICC are not explicit on the subject of authorisation of bank overdrafts. In fact, Article 108.2 related to banks indicates that the Organisation must retain a “sufficient” level of liquidity to honour the payment of cheques and other payment instructions received by the Organisation.

110. By way of comparison, bank overdrafts are not used as an aspect of cash management within the United Nations organisations.

111. Even if this possibility would comply with the Financial Regulations and Rules of the ICC, the use of a bank overdraft would involve a substantial cost to the Organisation if the amount of the overdraft were high and long-term. The financial conditions connected with bank overdrafts are subject to negotiation by each establishment individually. By way of example, however, the bank overdraft rate applied by the bank ABN AMRO is 11%.

c) Host State loan

112. The Netherlands have granted the Organisation a loan for the financing of the Permanent Premises Project by the States not making any voluntary contribution to the project. The conditions of this loan were negotiated in 2009: a term of 30 years and an interest rate of 2.5%. The loan, limited to €200M, is about half used.

113. If the excess amount of the works remaining to be financed reached €6M (“high” assumption), the financial consequences connected with a Host State loan extension would be substantial for the Organisation. Taking a borrowing period of 30 years at a rate of 2.5% per annum, a borrowing supplement of €6.0M would lead to a total cost of interest of €2,534,610 over 30 years, i.e. an annualised amount of €84,487. In terms of cash flow, the monthly instalment, including the payment of interest and repayment of capital, would thus amount to €23,708, i.e. an annual amount of €284,496 to be included in the ICC payment forecasts over the next 30 years.

114. Taking the “low” assumption of an excess on works remaining to be financed of €4M, the loan supplement over 30 years at a rate of 2.5% would have a total interest cost of €1,689,740 and therefore an annualised amount of €56,325. Once translated into cash flow, the monthly instalment of €15,805 would give rise to an annual payment of €189,660.

115. The increase in the amount of the loan, valued at between €4M and €6M depending on the assumptions, would create new financial commitments for the ICC over the next 30 years, with an impact on the Organisation’s financial result and annual cash payments.

116. The mobilization of an additional loan would also require a decision of the Assembly of States Parties, which should rule on a reassessment of funding options chosen by the States, namely an increase in voluntary contributions for the countries that have chosen this method of financing, and an increase in annual instalments for the states that have chosen to smooth over 30 years financing the permanent premises of the Organization.

117. In the light of the financial costs and the related capital repayment obligations, the cost/benefit ratio of this scenario does not appear to be satisfactory to mitigate any cash difficulties experienced by the Organisation in the short term as it does not provide any financial flexibility. This solution has a substantial financial cost in the long term.

6. Ways of improving the cash flow position in the medium term

6.1. Contribution recovery policy

118. The payments of contributions by States Parties are subject to numerous unknown quantities, connected with the good will of the latter, which make any cash management by the ICC difficult.

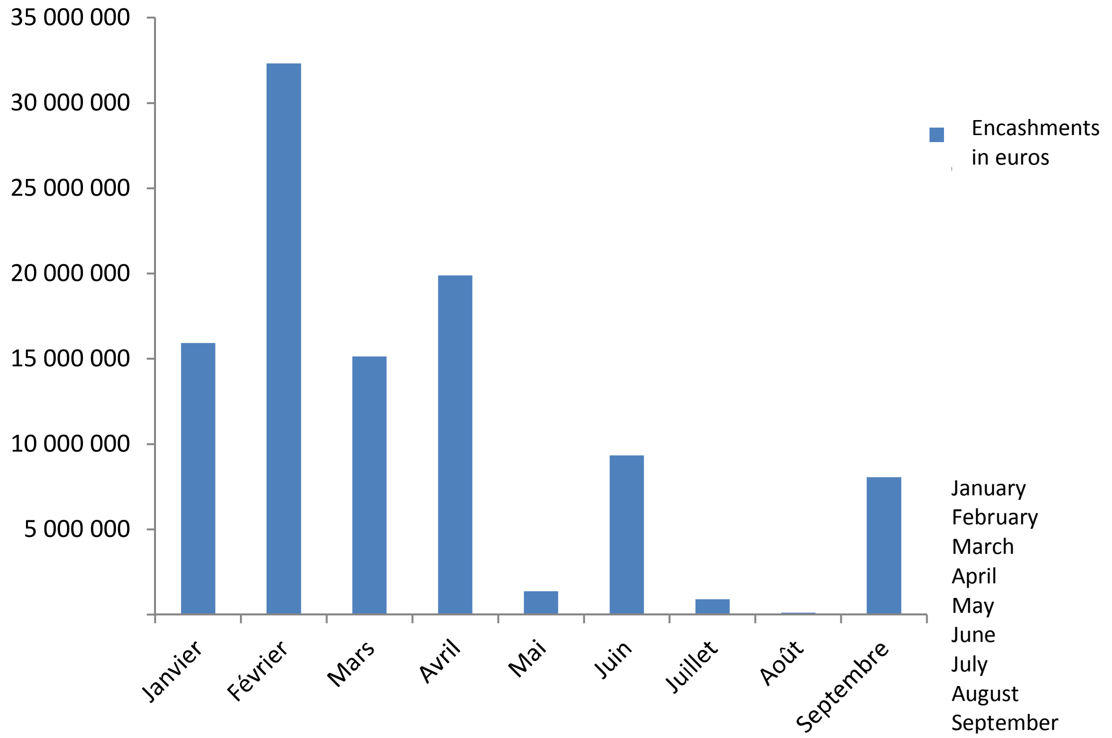
119. As of 15 September 2015, the Organisation had more than €30 M of contributions not paid for the financial year 2015, distributed over 56 States Parties. This amount fell by half in October 2015 after the settlement of the balance of the 2015 contribution by a single State (€15.9M).

120. Although the Organisation’s financial rules provide for settlement of the contributions 30 days after the date of issue of the invoice, this settlement period is only very rarely observed by the States Parties. As of 31 January 2015, only 12 States Parties had made total or partial payments of the contribution to the Organisation. This figure amounted to 39 States Parties at 28 February 2015.

121. The majority of the 123 States Parties therefore do not observe the 30-day settlement period stipulated by the Organisation’s financial rules in the strict sense.

122. As shown in the graph below, the Organisation receives many contributions during the first two months of each year (€48.2M collected by the Organisation in January and February 2015). This tendency continues before slowing down at the end of the first half-year. The rates of entry of the contribution slow down and reach a plateau in the 4th quarter.

Table 9: Encashments of contributions over the first nine months of the financial year 2015 (in euros)

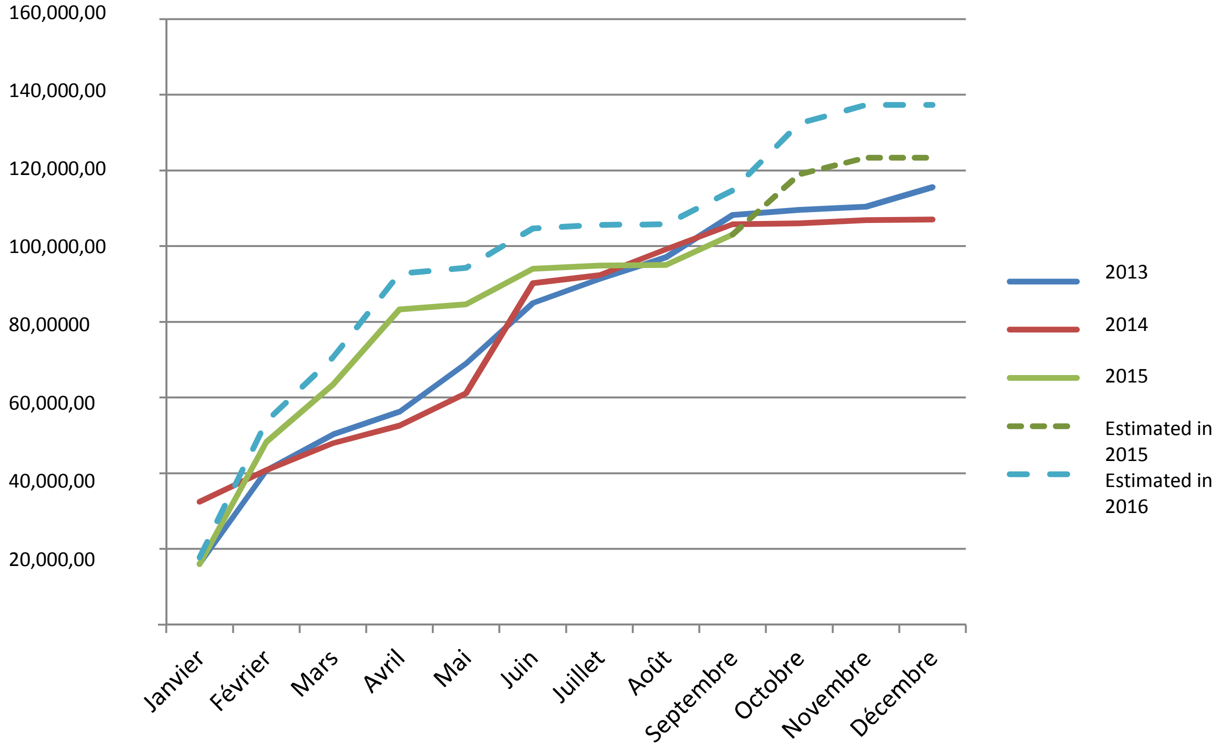


Source: External auditor, according to ICC data

123. The payment of contributions by the same country may follow different trends over the years. Thus, over the last three financial years, the payments of contributions by three major contributors to the Organisation do not follow any pre-set rule:

- One contributor paid its contributions in two instalments in 2013 (on 13 March and 17 June), two instalments in 2014 (on 19 March and 18 June) and two instalments in 2015 (on 26 February and 20 October).
- Another contributor paid its contributions in two instalments in 2013 (on 21 February and 30 August), three instalments in 2014 (on 16 January, 28 January and 4 August) and three instalments in 2015 (on 26 January, 27 January and 8 June).
- A third contributor paid its contributions in two instalments in 2013, (on 12 February then on 19 July), one instalment in 2014 (on 23 January) and one instalment in 2015 (on 6 February).

Table 10: Total payments of contributions over the period 2013-2016 (in euros)



Source: External auditor, according to ICC data

124. Contribution encashments follow different rates in 2014 and in 2015: contributions were received more quickly in the 1st half of 2015 than in the 1st half of 2014, with more than €80M received between January and April 2015, while only €50M had been received over the same period in 2014.

125. The unforeseeability of contribution encashments makes any intra-annual forecast of cash flows collected by the Organisation and, therefore, any optimisation of the Organisation's cash levels over the year difficult. In fact, a knowledge of the contribution encashments dates would enable the Organisation's main payments to coincide with the main encashments.

126. This unforeseeability creates a major operating risk as the ICC's cash level may be threatened by the late arrival of a major contribution. Thus, the balance of €15.9M of one State's contribution due for 2015 had been expected by the Organisation since mid-June by referring to the practice observed in previous years. This contribution was finally received on 20 October, four months after the anticipated date of receipt.

127. Based on the historical State Parties payments behaviour, the Organisation's cash flow forecasts do not take into account certain contributions for the year 2015 payable by the States Parties. The recovery of these sums between now and the end of the year would result in an improvement of +€8.5M in the Organisation's net cash flow forecasts.

128. In order to mitigate the various operating risks connected with cash, a recovery plan could be a solution to be implemented. It could take place as the States Parties have failed to observe the 30-day payment period. The introduction of a payment schedule, negotiated between the State Party incurring payment arrears and the Organisation, would present several advantages for the ICC :

- an improvement in collection forecasts;
- planning the Organisation's cash requirements over several months, based on the rates of payment;
- the introduction of an investment policy on accounts frozen for longer periods than at present and therefore more attractive financially.

129. The introduction of debt repayment plans with the States Parties concerned would enable the States to assume responsibility without resorting to contentious recovery measures. Failing any improvement in the recovery of arrears of more than one year, however, the Organisation should contemplate imposing the penalties stipulated in the Financial Rules and regulations, which it has not done to date.

6.2. Control over the payment periods

130. The monthly cash payments are mainly composed of personnel expenses (70% of the total) but also the purchase of services and goods.

131. Except staff payments, the rate of payment is related to the suppliers' payment policy and to the payment periods applied with them. This period for the payment of supplier debts has a direct effect on the cash flow position at the end of the month. In accordance with due legal and contractual dates of payments, ICC could try to optimize this payment period based on the available cash.

132. The supplier invoices are paid and recorded in the accounts following ratification by the managers of the unit issuing the order. The date of receipt of the invoices is indicated on the invoices but is not entered in the SAP accounts software.

133. The payment procedures in force within the ICC provide for the payment of supplier invoices according to the following payment periods:

- one payment on receipt of the invoice for most suppliers and for certain types of expenses such as services invoiced by the United Nations, orders for land office equipment. A large proportion of suppliers are affected by this measure. This part seems to represent a substantial part of the total number of suppliers;
- one payment within 14-15 days for expenses connected with services (water, electricity, transport);
- one payment within 30 days for telephone and Internet expenses;
- one payment within 45 days or even 60 days for the payment of taxes.

134. The external auditor conducted a survey on the payment periods. This survey was conducted on 20 invoices selected from a statement extracted from SAP detailing the list of supplier invoices for the period from 1 January to 30 September 2015. These invoices represent a payment flow[17] of around €18.2M.

135. The external auditor found that the average payment periods are between 11 and 19 days after the date of issue of the invoice. This period includes the receipt of the invoice and the check made by the managers of the unit issuing the order. The period for the settlement of supplier invoices appears to be very short and contributes towards putting pressure on the ICC cash.

136. In order to measure the effect of these short payment terms on the ICC's cash flow position, the external auditor applied a 30-day payment period to the sample of supplier invoices selected. Based on this assumption, one would thus see an improvement in the working capital requirement of around €3M for the month of March 2015 by delaying payment to suppliers. Therefore a time difference in payments could make it possible to improve the cash management and avoid the monthly cash crisis.

137. The statutory period for the payment of suppliers according to the European Directive[18] should not exceed 30 days following the date of receipt of the invoice, or an equivalent request, by the debtor. When the date of receipt of the invoice or an equivalent payment request is uncertain, it should not exceed 30 calendar days following the date of receipt of the goods or provision of services.

138. The average payment period applied by the ICC, less than 19 days, thus lies far below the European statutory period of 30 days. In the case, the contractual conditions

[17] Including an invoice from the supplier Courtys for an amount of €7.1M.
[18] Article 4 of the European Directive of 16 February 2011 on combating late payment in commercial transactions.

negotiated with the vendor would permit it and after an analysis case by case, the ICC could try to extend the supplier invoice payment time to reach the 30-day period.

139. Moreover, disbursements for the payment of invoices issued by the supplier Courtys could also be deferred. Extending the payment of these invoices by a reasonable proportion could be contemplated while observing the contractual period of 30 days, in order to optimise these payments. According to our discussions with the Permanent Premises Project team, the statutory payment period for these invoices is 30 days. These invoices are paid within an average of 15 days.

6.3. Budget execution analysis

140. In the last two years, actual expenses were lower than those budgeted within the scope of the annual budget approved by the Assembly of States Parties. In 2013, the approved budgeted expenses amounted to €115.120M while actual expenses amounted to €110.273M, i.e. a budgetary saving of around €4.8M. In 2014, this budgetary saving[19] amounted to around €3.9M[20].

141. Consequently, all the appropriations made available for the implementation of ICC's programmes are not always fully used. In this connection, in 2013 and in 2014, the largest balances of budgetary appropriations were recorded for the following programme lines:

- counsel for victims expenses;
- personnel expenses (Judges, professional staff, General service staff).

142. The unused appropriations relating to counsel expenses amount to around €1.7M in 2013 and €1.2M at 31 December 2014. With regard to personnel expenses, the unused budget is larger at around €2.5M in 2013 and €1.8M in 2014.

143. In a period when the liquidity risk is high for the Organisation, budget control is essential. Therefore these programme lines should be analysed carefully when developing the budget to lead to better estimates. These credits can be carried over to other programs lines.

144. An analysis of implementation of the budget in previous years should contribute towards improving the balance between income and expenses budgeted. In principle, the balance of unobligated credits at year end, less any contributions by the States Parties relating to that financial year remaining outstanding, constitutes a cash surplus (Article 4.5 of the Financial Regulations). When the expenses incurred are higher than the contributions collected, however, the budgetary balance of unused appropriations is not equivalent to a surplus but rather corresponds to a cash deficit. Consequently, in 2014, the contributions collected (€116M) by the ICC were lower than those budgeted (€122M) and the expenses incurred (€117.6M). A budgetary deficit is then recorded at year end.

145. Although savings were made in 2014 on certain budgetary programme lines, a deficit was finally recorded, connected with the non-recovery of all the contributions budgeted.

146. In order to anticipate the recording of deficits at year end, it would be appropriate to introduce a procedure enabling the budget to be reviewed during the course of the year. The management of expenses still to be incurred would thus be greater in the light of the contributions collected, so as to limit situations when the budget is exceeded and contribute to a lesser deterioration in the working capital requirement.

147. Certain ICC expenses certainly cannot be reduced. Margins for the reduction in expenses may be identified, however, along the lines of the work initiated by the Committee on Budget and Finance during its 25th session held in October 2015. In fact, in its report, the Committee plans to propose, during the next session[21] of the Assembly of States Parties, a budgetary reduction of around €13M, i.e. -8% in relation to the proposed expense budget for 2016, which was initially fixed at €153.32M, to reach an amount of €139.39M. In a constrained budgetary context, these proposals clearly illustrate the fact that a reduction in items of expense may be envisaged without affecting the essential activities of the ICC.

[19] In 2014, within the scope of the general budget approved by the ASP, the expenses budgeted amount to €121,656 and the actual expenses amount to €117,691.
[20] See Annex 4: comparison between credits open and expenses.
[21] 14th session of the Assembly of States Parties of 18 to 24 November 2015.

148. This budget review process could gain significance if it takes place during the course of the year. The N budget should be reviewed and adjusted when necessary during the course of year N depending on the results observed during the year of implementation of the budget.

149. Every year, a Budget Performance Report is drawn up as of 30 June and presented to the Committee on Budget and Finance. According to the information in the external auditor's possession, however, the conclusions of this report do not give rise to a budget review during the year. Measures could possibly be taken at this time, if necessary and to the extent possible, to adjust the expense forecasts for the year in progress based on the level of contributions collected.

V. Conclusion

150. An appropriate level of cash reserves should be at least equivalent to the Working Capital requirement at all times.

151. Should the ICC finance the Permanent Premises Project overruns by using the Working Capital Fund, the cash forecasts examined by the external auditor does not indicate that a cash shortage would arise in the short term.

152. In a context that is not favourable to an improvement in the recovery of contributions, however, use of the Working Capital Fund to absorb the additional costs generated by the increase in the budget for the permanent premises project would reach worrying levels, unless it were used on a temporary basis.

153. The ASP could consider the possibility of guaranteeing a possible shortfall of the Working Capital Fund by using the Contingency Reserve, as a temporary solution for the inadequacy of the Working Capital Fund.

154. Furthermore, the ASP could authorize the Court to open a credit line to give assurance that that, only if necessary, the level of Working Capital Fund can be brought up to the level of approximately 8% of annual budgeted amount, following the practices of other International Organisations. Upon opening the credit line, the Contingency Fund could be released and utilized as is prescribed in Financial regulations and Rules.

155. These short-term solutions will not exempt the ICC from more long-term work on the factors of tension that weigh on its cash.

156. The ICC should adopt a plan for financing the employee benefits liabilities in order to smooth charges related to these liabilities, which are likely to increase in the future. Further work will have to be carried out to determine if the establishment of a reserve would be appropriate and what should be its level.

157. The arrears in the payment of contributions due to the ICC offer a substantial credit reserve. Speeding up recoveries or obtaining greater foreseeability of the payment of contributions to be received in the ongoing year offers margins for manœuvre. On these points, the States Parties hold the key, which does not exempt the ICC from an effort of individual persuasion.

158. The ICC could try to extend, when it is possible, the supplier invoice payment time, in order to bring it more in line with the income. It could also study the possibility of intensifying the practice of revising the programme budget during the year, in order to control costs still to be engaged, enable reprioritization of activities and absorb unforeseen expenditures.

VI. Acknowledgments

159. The audit team wishes to thank the Finance Section and its Head, Mr Gela Abesadze, for his resourcefulness. It also wishes to thank Mr Ivan Alippi, Director of the Division of Management Services.

End of audit observations.

Appendices

Appendix 1

Rebalancing of contributions from countries in 2016

1. The scale of contributions of the ICC is set for a period of three years. The current scale, calculated for the period 2013-2015, ends on 31 December 2015. This scale has thus been updated for the period 2016-2018.

2. The ICC scale is attached to the one applied for the apportionment of expenses of the UN regular budget. The ICC therefore relies on the revision of the United Nations scale, performed by the UN Committee on Contributions in New York. This Committee calculates a scale of assessment by country based on economic data of the Member States over the three years preceding the publication of the scale. This Committee publishes a special annual report that results in updates.

3. The ICC uses the United Nations scale and adjusts it according to the number of States Parties on a pro rata basis. This pro rata leads to the calculation of a scale by country specific to the Organisation. It is also the subject of additional adjustments so that the maximum assessment rate does not exceed 22% for States paying the most significant contributions and does not exceed 0.01% for the least developed countries.

4. For the 2016-2018 triennial plan, the calculation of the new scale results, according to countries, in increases or decreases in contribution rates. According to the data provided by the Finance Department, the main increases in contribution rates concern Brazil (+1.85 basis points), Argentina (+0.83 basis point) and Australia (+0.69 basis point). The relative contribution of other countries like Japan is on the decline.

Changes in the contribution rates by country

Country	*Contribution rate 2013-2015*	*Estimated contribution rate 2016-2018*	*Variation*
Brazil	4.6628	6.5130	+1.8502
Argentina	0.6865	1.5196	+0.8331
Australia	3.2961	3.9814	+0.6853
South Korea	3.1689	3.4737	+0.3048
Switzerland	1.6639	1.9421	+0.2782
Canada	4.7422	4.9763	+0.2341
Nigeria	0.1430	0.3561	+0.2131
Chile	+0.5308	0.6797	+0.1489
Colombia	0.4116	0.5486	+0.1370
Sweden	1.5257	1.6287	+0.1030
Netherlands	2.6286	2.5248	-0.1038
Hungary	0.4227	0.2743	-0.1484
Greece	1.0139	0.8024	-0.2115
Germany	11.3487	10.8845	-0.4642
Mexico	2.9274	2.4447	-0.4827
Spain	4.7248	4.1620	-0.5628
France	8.8885	8.2779	-0.6106
United Kingdom	8.2290	7.6033	-0.6257
Italy	7.0689	6.3852	-0.6837
Japan	17.2129	16.4912	-0.7217

5. The risks of non-recovery of such receivables must be taken into consideration by the Organisation for the preparation of cash forecasts for the year 2016.

Appendix 2

Recovery of contribution arrears

A. General principles

1. The Financial Regulations and Rules of the Organisation provide for the payment by States Parties of the contributions due under a year, 30 days after issuing the invoice.

2. On 15 September 2015, the contributions not yet paid by the States Parties are explained by two amounts:[1] €30.0 million of contributions for 2015 not yet settled by the States, and €8.2 million related to contributions in arrears for 2014 and prior years.

B. Sanctions provided for by the Organisation

3. At present, no sanctions are applied to States Parties presenting delays in the payment of their contributions. These sanctions are nevertheless provided for in Article 112 of the Rome Statute of the International Criminal Court:

> *"A State Party which is in arrears in the payment of its financial contributions towards the costs of the Court shall have no vote in the Assembly and in the Bureau if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The Assembly may, nevertheless, permit such a State Party to vote in the Assembly and in the Bureau if it is satisfied that the failure to pay is due to conditions beyond the control of the State Party."*

4. The implementation of these sanctions could ultimately lead to an improvement in the payment periods of contributions. Financial penalties could also be applied, for example, billing of interest rates on the amount due in case of arrears higher than three months.

C. Aging balance on 15 September 2015

5. The contribution in arrears relating to prior years amounting to 8,151,645 euros on 15 September 2015, is broken down by country as follows:

States Parties	*Arrears in contribution on 15 September 2015 (in euros)*	*Date of last payment*
Antigua and Barbuda	3,798	11/10/2013
Benin	15,530	27/03/2012
Brazil	5,531,889	14/04/2015
Cape Verde	1,900	30/12/2013
Comoros	12,420	No payment
Congo	23,063	22/11/2013
Dominique	6,840	12/3/2014
Gabon	37,744	21/02/2013
Gambia	1,898	6/1/2015
Grenada	4,167	20/04/2015
Guinea	7,830	28/09/2011
Malawi	8,995	28/09/2011
Maldives	169	16/05/2013

[1] *cf.* "Report of the Committee on Budget and Finance on the work of its twenty-fifth session".

States Parties	*Arrears in contribution on 15 September 2015 (in euros)*	*Date of last payment*
Mali	7,599	16/01/2014
Niger	17,889	23/11/2009
Nigeria	98,051	25/10/2013
Uganda	21,874	5/12/2012
Paraguay	3,403	5/2/2015
Dominican Republic	165,695	19/06/2015
United Republic of Tanzania	47,514	1/6/2010
Saint Vincent and the Grenadines	5,303	14/07/2011
Vanuatu	5,173	No payment
Venezuela	2,122,901	4/9/2012
Total arrears on 15 September 2015	**8,151,645**	

6. On 15 September 2015, 23 States Parties have contribution in arrears pertaining to previous years. These arrears represent 6.87% of contributions assessed during the year 2014.

7. The analysis of the amounts of the aging balance shows that two countries alone account for 93.9% of the amount of arrears, i.e. €7.7 million.

8. Of the remaining 496,855 euros, the situations differ according to the States Parties concerned including some that have not paid any contributions since 2009 or 2010.

9. Some countries have never paid their contributions since joining the Organisation.

10. Beyond the financial significance of the amounts involved, an effort must be taken by the Organisation to ensure the regular payment of contributions by States Parties and, if necessary, to organise debt clearance plans.

Appendix 3

Scenarios of costs relating to a line of credit

1. The mobilisation of an overdraft facility has three variable elements:

- the duration of mobilisation of the credit line,
- the mobilised amount of the credit line,
- the rate charged by the establishment.

2. Starting from the premise of mobilising 100% of a credit line and a fixed cost equal to 1% of the total amount of the line, the total cost to the Organisation of the mobilisation of a credit line can be calculated using variable rates charged by banking institutions.

3. In case of mobilisation of the credit line over a period of 15 days:

Cost of mobilisation of a credit line for 15 days (in euros)	*3%*	*4%*	*5%*	*6%*	*7%*	*8%*	*9%*	*10%*
1,000,000	101,250	101,667	102,083	102,500	102,917	103,333	103,750	104,167
2,000,000	102,500	103,333	104,167	105,000	105,833	106,667	107,500	108,333
3,000,000	103,750	105,000	106,250	107,500	108,750	110,000	111,250	112,500
4,000,000	105,000	106,667	108,333	110,000	111,667	113,333	115,000	116,667
5,000,000	106,250	108,333	110,417	112,500	114,583	116,667	118,750	120,833
6,000,000	107,500	110,000	112,500	115,000	117,500	120,000	122,500	125,000
7,000,000	108,750	111,667	114,583	117,500	120,417	123,333	126,250	129,167
8,000,000	110,000	113,333	116,667	120,000	123,333	126,667	130,000	133,333
9,000,000	111,250	115,000	118,750	122,500	126,250	130,000	133,750	137,500
10,000,000	112,500	116,667	120,833	125,000	129,167	133,333	137,500	141,667

4. In case of mobilisation of the draft line over a period of 30 days:

Cost of mobilisation of a credit line for 30 days (in euros)	*3%*	*4%*	*5%*	*6%*	*7%*	*8%*	*9%*	*10%*
1,000 000	103,750	105,000	106,250	107,500	108,750	110,000	111,250	112,500
2,000 000	107,500	110,000	112,500	115,000	117,500	120,000	122,500	125,000
3,000 000	111,250	115,000	118,750	122,500	126,250	130,000	133,750	137,500
4,000 000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000
5,000 000	118,750	125,000	131,250	137,500	143,750	150,000	156,250	162,500
6,000 000	122,500	130,000	137,500	145,000	152,500	160,000	167,500	175,000
7,000 000	126,250	135,000	143,750	152,500	161,250	170,000	178,750	187,500
8,000 000	130,000	140,000	150,000	160,000	170,000	180,000	190,000	200,000
9,000 000	133,750	145,000	156,250	167,500	178,750	190,000	201,250	212,500
10,000 000	137,500	150,000	162,500	175,000	187,500	200,000	212,500	225,000

5. In case of mobilisation of the credit line over a period of 60 days:

Cost of mobilisation of a credit line for 60 days (in euros)	*3%*	*4%*	*5%*	*6%*	*7%*	*8%*	*9%*	*10%*
1,000,000	105,000	106,667	108,333	110,000	111,667	113,333	115,000	116,667
2,000,000	110,000	113,333	116,667	120,000	123,333	126,667	130,000	133,333
3,000,000	115,000	120,000	125,000	130,000	135,000	140,000	145,000	150,000
4,000,000	120,000	126,667	133,333	140,000	146,667	153,333	160,000	166,667
5,000,000	125,000	133,333	141,667	150,000	158,333	166,667	175,000	183,333
6,000,000	130,000	140,000	150,000	160,000	170,000	180,000	190,000	200,000
7,000,000	135,000	146,667	158,333	170,000	181,667	193,333	205,000	216,667
8,000,000	140,000	153,333	166,667	180,000	193,333	206,667	220,000	233,333
9,000,000	145,000	160,000	175,000	190,000	205,000	220,000	235,000	250,000
10,000,000	150,000	166,667	183,333	200,000	216,667	233,333	250,000	266,667

6. These cost scenarios show that the financial impact of mobilisation can be optimised from the start by negotiating a variable interest rate charged by the partner bank. The financial impact can also be optimised by varying the durations of use of the credit line and the drawdown amount.

7. Despite a significant annual fixed cost (€100,000), the credit line drawdowns allow better optimisation of the Organisation's cash management.

8. Taking into account the worst-case scenarios (fixed rate of 1%, variable rate of 10%, €10M drawdown, 60 days of credit line drawdown over one year), the mobilisation of a credit line would represent a cost to the Organisation equal to €266,667, or 0.19% of the total amount of contributions budgeted for the year 2016.

9. This amount seems reasonable in view of the financial security that it would ensure for the Organisation, the States Parties and the Finance & Budget Department.

10. The mobilisation of a credit line would meet the Organisation's potential decreases in cash over a few days, without however affecting the capital structure of the Organisation, or mobilising the States Parties to obtain a budget extension.

Appendix 4

Comparison between appropriations and expenditures

Table 1: Annual comparison of monthly expenditures against budgeted expenditures for 2013

Total ICC	*Approved Budget 2013 (thousands of euro) Total*	*Expenditure 2013 (thousands of euro) Total*	*Difference (thousands of euro)*
Judges	*4,689.4*	*4,154.1*	*-535.3*
Professional staff	42,071.3		*-42,071.3*
General Service staff	21,070.3		*-21,070.3*
Subtotal staff	*63,141.6*	*60,620.0*	***-2,521.6***
General temporary assistance	11,186.3	10,670.2	*-516.1*
Temporary assistance for meetings	813.2	809.5	*-3.7*
Overtime	391.3	397.8	*6.5*
Consultants	318.1	632.1	*314.0*
Subtotal other staff	*12,708.9*	*12,509.6*	*-199.3*
Travel	4,394.1	4,600.7	*206.6*
Hospitality	31.0	24.2	*-6.8*
Contractual services	4,423.1	4,124.2	*-298.9*
Training	692.3	628.1	*-64.2*
Counsel for Defence	2,608.4	3,139.5	*531.1*
Counsel for Victims	3,448.2	1,735.1	***-1,713.1***
General operating expenses	16,908.0	16,571.6	*-336.4*
Supplies and materials	1,035.6	798.6	*-237.0*
Furniture and equipment	1,039.7	1,367.4	*327.7*
Subtotal non-staff	*34,580.4*	*32,989.4*	*-1,591.0*
Total	**115,120.3**	**110,273.1**	***-4,847.2***

Table 2: Annual comparison of monthly expenditures against budgeted expenditures for 2014

Total ICC	*Approved Budget 2014* (*thousands of euro*) *Total*	*Expenditure 2014* (*thousands of euro*) *Total*	*Difference* (*thousands of euro*)
Judges	*3,835.6*	*4,418.6*	583.0
Professional staff	42,574.2		-42,574.2
General Service staff	21,302.2		-21,302.2
Subtotal staff	*63,876.4*	*62,057.1*	**-1,819.3**
General temporary assistance	17,024.1	16,282.8	-741.3
Temporary assistance for meetings	543.5	499.4	-44.1
Overtime	358.5	334.6	-23.9
Consultants	273.7	312.7	39.0
Subtotal other staff	*18,199.8*	*17,429.5*	-770.3
Travel	5,184.6	5,479.2	294.6
Hospitality	31.0	26.9	-4.1
Contractual services	4,405.1	3,876.1	-529.0
Training	703.8	553.8	-150.0
Counsel for Defence	2,866.4	2,959.2	92.8
Counsel for Victims	3,000.7	1,745.7	**-1,255.0**
General operating expenses	17,524.3	16,555.2	-969.1
Supplies and materials	1,015.4	813.6	-201.8
Furniture and equipment	1,013.0	1,776.6	763.6
Subtotal non-staff	*35,744.3*	*33,786.3*	-1,958.0
Total	**121,656.1**	**117,691.5**	**-3,964.6**

Annex

Letter of the Chair of the Committee on Budget and Finance to the President of the Assembly, dated 17 November 2015, regarding the cash reserves recommended by the External Auditor[1]

The Assembly of States Parties (the Assembly) at its resumed thirteenth session that was held in The Hague on 24 and 25 June 2015 requested in its resolution ICC-ASP/13/Res.6 (Resolution on permanent premises) the External Auditor to provide the Bureau with a detailed report on the appropriate level of the cash reserves of the Court, and on any risks that might be attached to reducing them in order to finance the permanent premises cost overrun; and has requested the Committee on Budget and Finance (the Committee) to provide the Bureau with recommendations on such reductions.

The Committee took note of the eight recommendations contained in the External Auditor's report submitted on 13 November 2015 regarding the cash reserves, and appreciated the work and analysis provided by the External Auditor on the subject matter.

The Committee in more than one occasion had reviewed and considered the issue of the cash reserves of the Court, and in particular the Employee Benefit Liabilities (EBL) and the Working Capital Fund (WCF). The Committee has stressed that the Court`s ability to meet its obligations to staff and to its core business must be assured at all times. Unfunded EBL should not be allowed to produce a financial burden with which the organization would struggle in the future, resulting in undue pressure on its core business. At the same level, the WCF should not be used for other purposes than meeting short-term liquidity problems pending receipt of assessed contributions.

As a result of the Revision project of the Registry, the level of the EBL has been reduced significantly since 31 December 2014 from €11.2 million to €7.9 as at 13 November 2015. A further €1.2 million have to be considered for the entitlements of judges and staff for 2015, which would result in a balance of €6.7 million.

In regards to the WCF, when the €7.4 million level was approved by the Assembly, it covered approximately one month of average spending; a ratio that has fallen since to about two weeks at current budget levels.[2]

As it was decided by the Assembly to cover the cost overrun from EBL and WCF, and after careful consideration of the External Auditor's recommendations, the Committee recommended that:

1. The EBL fund should retain resources to cover the judges and staff liabilities for the amount of €0.7 million for 2016. The remaining balance could be used to partially cover the permanent premises cost overrun, while further analysis by the Committee of the options for a slow build-up reserve to cover such liabilities should allow for it to eventually recommend the appropriate level of the EBL;

2. The WCF should be approved at least at its 2015 level of €7.4 million. However, up to €3.3 million could be used to cover the remaining balance of the permanent premises cost overrun. In order to replenish the WCF to its approved level, the Committee recommended that surpluses as of 1st January 2016 and onwards be used for this purpose as a matter of priority; and

3. As an extraordinary measure, the Committee recommended that the Court to be authorized to obtain line of credit through commercial banking for one year in order to cover the difference between the balance of the WCF and the approved level of €7.4 million. Upon opening the line of credit, the Contingency Fund could be released and utilized as prescribed in the Financial Regulations and Rules. The fees resulting from the line of credit should be absorbed by the Court. The Committee

[1] Reference: ASP/2015/CBF/101.
[2] ICC-ASP/14/15, para. 178.

will review the situation and a possible need for further measures in the context of the 2017 proposed budget.

4. Forward looking, the Committee recommended the Assembly that in order to maintain budgetary discipline; funds should only be used for the purposes for which they were created.

Kind regards,

[signed]

Carolina Fernandez
Chair
Committee on Budget and Finance
Assembly of States Parties