

INTERNATIONAL CRIMINAL COURT

Assembly of States Parties

The Hague – 21 November 2015

Presentation of the Reports of the External Auditor

Mr. President,

Ladies and Gentlemen,

I have the pleasure to be with you today to present to you the reports issued by your External Auditor over the course of 2105, pursuant to Article 12 of the Financial Regulations and Rules of the International Criminal Court.

Let me first convey to you the sincere regrets of Mr. Didier Migaud, First President of the Court of Auditors and External Auditor of the ICC, who, for reasons of pressing national duties, has had to remain in Paris. He hopes to be able to visit the Court next year, to provide an overall assessment for the four-year auditing period.

It is the first time, since I took over from Mr. Metzger, on 1 September 2015, as Director of the External Audit of the ICC, that I have had the honour of meeting you in plenary session. In my role at the Court of Audit as Head of the Department dealing with the external audit of international organisations, I have been supervising since 2012 the smooth functioning of the audit operations of your Organisation. The First President considered that my appointment would ensure, in the best possible manner, continuity in our work, so as to cover, in optimum conditions, the fourth year of our ICC audit mandate, which encompasses the financial years 2012 to 2015.

I would like to give you a brief overview of four audit reports which deal with the following:

- the financial statements of the International Criminal Court for the year ended 31 December 2014,
- the financial statements of the Trust Fund for Victims for the year ended 31 December 2014,

- the financial reporting and management of the Permanent Premises Project of the International Criminal Court,
- the specific verification that your External Auditor has performed at your request, under Article 12.5 of your Financial Regulations and Rules, on the adequate level of cash reserves of the ICC.

Let me point out from the outset that for each of the two sets of financial statements we have been specifically called on to certify – those of the Court and the Trust Fund for Victims – we are issuing an unqualified opinion. The International Criminal Court took a significant step in 2014 when it presented, for the first time, its financial statements in conformity with the International Public Sector Accounting Standards (IPSAS).

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Let me now turn to the first audit report relating to the financial statements of the International Criminal Court for 2014.

I would begin by noting that only three of the six recommendations made in 2014 on the financial statements for 2013 have been acted on, and that two earlier recommendations made in 2013, similarly remain on hold.

With regard to the earlier recommendations made in 2013, one suggestion was to reinforce and clarify the respective functions, scope of authority and areas of responsibility of the Registrar and the Prosecutor.

In November 2013, the Assembly of States Parties gave a solid legal basis for the further development of the organisation's structure and for the enhancement of the dialogue between its different organs. We observe, however, that although the Registrar has sought to clarify the relationship between the Registry and the other organs of the ICC, within the context of the "ReVision" Project, the Financial Rules and Regulations do not yet reflect a set of more clearly defined functions nor do they refer to the practical modalities envisaged in order to underpin this process. Given the critical importance of this recommendation, we can but reiterate it explicitly.

Three of the recommendations formulated in 2014 in our report on the accounts for 2013 have only been partially implemented. I shall not dwell on this, as we are of the view that their implementation is well underway. The delay is mainly as a result of the technical

aspects involved in drawing up the necessary guidelines and procedures to implement these recommendations. We will report back on the successful completion of these measures in our next report.

This brings me to the recommendations that we made in 2015 in our report on the financial statements for 2014. Let me underscore the fact that the lower number of recommendations means, in our opinion, that our inventory of suggested financial reforms is nearing completion. I would like to expand on one of the two recommendations, namely the proposal that two reserves be created as part of retained earnings, under the authority of the Assembly of States Parties, to cover for the un-predictableness of legal aid costs and capital replacement costs for the permanent premises.

This recommendation stems from the principle of prudence. Certain types of expenditure are particularly difficult to budget for, because of their un-predictableness or their long-term nature. Such is the case with the legal aid costs and capital replacement costs.

In order to protect itself from unforeseen events connected with the ICC's legal aid costs, the level of which depends on exogenous factors, we showed how the Court had tended to overestimate the level of obligations in order to build up a sort of buffer or *implicit* reserve, even if it then meant cancelling any unused obligations. This approach limits the budget transparency and authority of the Assembly of States Parties, thereby making it far preferable to establish a dedicated fund.

Likewise, the costs required to finance the new permanent premises will not be linear and will tend to peak during particular periods. I am speaking here of substantial works and not, of course, of small-scale equipment or maintenance. It has been recommended, in order to ensure the smooth funding of this expenditure, the creation of a dedicated fund, into which States Parties would contribute annually a flat amount. If too much time is allowed to elapse before these costs are accounted for, States could face a situation where they must suddenly pay very large amounts. Conversely, a progressive contribution to a fund would enable them to spread their financial commitment and to plan large-scale works more rationally. Let us be clear on this: we are not proposing the inclusion of a provision with obligatory effect. We are expressing ourselves from the auditor's point of view on the efficiency of the financial procedures, as provided for in Article 12.3 of your Financial Rules and Regulations. The States Parties may consider that they have other priorities, but it is our duty to warn them that

they run the risk, in the future, of having to pay large amounts that they have not budgeted for.

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I shall not spend any time on the Trust Fund for Victims, as we have noted, with satisfaction, that all of our earlier recommendations have been followed; instead, I shall turn to our audit report on the financial reporting and management of the Permanent Premises Project.

As you are aware, our mandate consisted, at your request, of an audit, on the one hand, of the financial reporting as the Project developed, and, on the other, of the Project management in general, since the Project does not itself have an accounting system or specific financial statements which could be certified.

This year, we have once again brought in an experienced team of auditors and we have retained the services of a qualified planning expert, with a great deal of experience of major construction projects.

Before setting out our new recommendations, I note that out of the eleven recommendations that were made previously, six have been implemented, two are in the process of being implemented, and three have been deemed non-applicable and thus put aside.

One of the two recommendations which are in the process of being implemented, will need to be followed with particular care, due to the potential risk of cost overrun. We have recommended that the Court assesses the risks pertaining to recurrent operating costs in connection with sophisticated installations, such as the mirror pond or the green wall over the “architectural steel grid”. The Project managers have prepared a comprehensive in-depth study of the maintenance and operating costs of the new premises. We will examine in 2016 the relevance of these projections.

I now come to the six new recommendations that we have made following our review of the Project carried out in 2015.

I will limit myself here to commenting on the most significant of these recommendations, it being understood that they should all, in our opinion, be implemented without exception.

I shall focus on all of those matters which lie at the heart of the governance and management of the Project.

The Assembly of States Parties set out the nature and scope of the governance of the Project. In this regard, the Assembly has relied mainly on the Oversight Committee, a subsidiary organ of the ASP, whose role is strategic oversight, and on the Project Director, whose role is the routine management of the Project. The operational follow-up of the works and tests, as well as the performance of the budget, have been entrusted to Brink, a firm which is specialised in project management assistance; this firm regularly presents a report, under the authority of the Project Director, to the Oversight Committee.

We have made three principal recommendations on the administrative and financial governance of the Project.

- With regard to the financial reporting of the Project, we have recommended that the Project managers complete the information of the Oversight Committee through a concise and documented presentation of the approved budget, of liabilities, of payments and of projected provisions. Indeed, the financial reporting available prior to August 2015 contained a number of parameters which required greater explanation, for example, the margin threshold for the provision for contingencies. Since August 2015, the Office of the Project Director has been preparing a monthly statement of account which better fulfils the auditor's expectations. We will, in our next report in Spring 2016, summarise what conclusions can be drawn from this.
- Once the Permanent Premises Project and the relocation process have been completed, the ICC will, however, still have management duties to perform. The human resources allocated to the management of the Project will need to be redeployed and redirected towards the administrative follow-up to the operation, such as the liquidation of contributions, the settlement of invoices from suppliers, the settlement of possible disputes with companies, the closure of the operation and the final discharge. We think it is essential that the budget for 2016 provides for the necessary resources to cover these follow-up activities, so as to guarantee that the Project comes to a close in a way that best serves the interests of the States Parties.
- Finally, I would like to mention our recommendation consisting in organising the transition from the current Oversight Committee towards a future organ that is representative of the States Parties, which would be responsible for overseeing the most important questions. Without wishing to overlook the fact that a strategic

management of the operation was needed during the Project, and that this was performed both successfully and professionally by the Oversight Committee, it has to be said that for the Committee to keep this role over the long-term could lead to confusion between oversight and management functions. We have therefore recommended that its meetings be gradually reduced in number, so as to avoid any ambiguity as to the allocation of responsibilities between the State Parties and the executive directors of the ICC.

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Let me finish with a few words on the special verification that we conducted, as a matter of urgency, on the levels of cash reserves of the ICC, at the request of the ASP.

Your Assembly decided, at the end of June, to request the External Auditor to carry out an additional audit on “the appropriate level of the cash reserves of the Court and on any risk that might be attached to their reduction”. Moreover, you also asked your External Auditor for a “detailed review of the project accounts with emphasis on the cost overruns”. As agreed with you, this second special audit will be carried out by a special team next January, after the complete relocation of ICC departments to the new premises.

As soon as I took up my functions, my first decision was to come to The Hague, at the beginning of September, in order to identify the expectations of the States Parties. It was, in particular, important to understand the scope of the additional verifications being requested by your Assembly and to ascertain how best to respond. As you know, the External Auditor is subject to rigorous professional and ethical standards, which oblige him to examine systematically with the entity being audited the feasibility of the audit and its implications in terms of the resources required.

The question put by the Assembly of States Parties on “the appropriate level of the cash reserves” raised two methodological difficulties.

- The first, is that a cash situation cannot be reviewed in isolation. An Organisation holds, on a permanent basis, a certain amount of cash in its cash reserves. The appropriate level of that reserve, from an economic and financial standpoint, is that which will allow the Organisation to always be in a position to meet its obligations, which are represented by the difference between encashments and disbursements. If

the outgoing payments are greater than the incoming payments, this signals that there is a “Working Capital requirement”: and the cash reserve is used to cover it. This level is constantly changing as the encashments and disbursements vary day-to-day. It was therefore necessary to examine the projected provisional cash situation over a fairly long period of time in order to be able to identify any points in time which could potentially lead to a business interruption. As is apparent from this explanation of our approach, the External Auditor’s assessment depends on the quality of the forecasts made by the ICC. But these projections are by their very nature imperfect as they are susceptible to alteration at any given moment as a result of an unexpected event, for example, the receipt of an outstanding contribution.

- This leads me on to the second difficulty. We needed to agree with the finance department of the ICC on what information needed to be supplied: it is not within an External Auditor’s remit to produce the audited organisation’s expenditure and revenue plan, but rather to review it. During our audit, we did not find any major reason to doubt the ICC’s projections, but our work is necessarily limited by this set-up and the assurances we give are not absolute.

What are the conclusions of our audit? If the ICC finances its budget overrun from the Permanent Premises Project through its cash reserves (without, however, using the Contingency Fund, which you have excluded), it should not find itself faced with a cash “deficit”, provided that it used the Funding set aside for employee benefits liabilities (EBL) and the Working Capital Fund. But, whereas the EBL fund would be completely used up, the Working Capital Fund could be reduced, at certain periods of time, to a worrying level, close to zero, which would expose the ICC to the risk of no longer being able to honour its financial commitments – a risk which the External Auditor cannot discard. In fact, the Working Capital Fund was established to enable you to deal with short-term cash problems pending receipt of assessed contributions. The ICC would in such a situation find itself devoid of any safety net.

The mission of your Auditor could have stopped short with this diagnosis, which answers your question. But we consider that part of our duty consists in suggesting some possible ways of dealing with a potential shortfall in the Working Capital Fund. On a very short-term basis, we have suggested the possibility of guaranteeing any eventual depletion of the Working Capital Fund by using the Contingency Fund. This would give you the time to

negotiate a line of credit, which would not necessarily have to be used. The cost of this line of credit would represent the insurance cost to safeguard against a cash shortfall, in return for the use of the Working Capital Fund.

These short-term measures will not dispense the ICC from the need to engage in a more long-term appreciation of the stress points affecting its cash reserves – beyond the financing of budget overruns resulting from the Permanent Premises Project – and of ways of easing them. We have mentioned a few solutions aimed at better cash management: place emphasis on the Court's efforts at recovering outstanding assessed contributions, adapt as far as possible the pattern of disbursements taking into account encashments, review in the course of the year the Court's appropriations in the event of shortfalls in incoming payments. These options will no doubt require preliminary study on the part of the ICC. These are matters we can return to on the occasion of future audits.

I have thus finished my presentation of the four reports that your External Auditor has submitted to you in 2015 with reference to the 2014 financial year.

Mr. President, Ladies and Gentlemen, may I thank you for your attention.

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