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Briefing by the Chairperson of the Audit Committee
Ms. Margaret Shava

World Forum Convention Center, King Willem Alexander room
Thursday 9 December 2021
10:00 – 11:30

Your Excellency, the President of the Assembly,

Distinguished representatives of the States Parties and of the

Court,

Dear colleagues,

1. It is a great pleasure to address you today on behalf of the Audit Committee (the “Committee/AC”), and to present to you the main outcomes of the thirteenth and fourteenth sessions of the Committee.

2. I avail myself also of this opportunity to acknowledge the dedication and commitment of my fellow colleagues from the Committee; and to appreciate the availability and open cooperation of the representatives of the Court, especially during these difficult times.

I also extend my sincere appreciation to the Executive Secretary and his team for their outstanding support and professional standard of work, upon which we rely.

I. UPDATE ON THE WORK OF THE AUDIT COMMITTEE IN 2021

Madam President

3. As the COVID-19 pandemic persisted so did its respective restrictions. The two sessions of the Committee were held virtually,

once again, under unusual circumstances. The first session was held from 8 to 10 March 2021; and the second session was held from 26 to 28 July, and on 11 August 2021, coordinating different time zones and limiting, as a consequence of the restrictions, the topics for discussion. Following the receipt of the former External Auditor's report on Governance Oversight at the close of business of the last session day, the Committee deemed it necessary to meet on an additional day to properly discuss and analyze the report.

4. The Committee focused at its two sessions on: (a) the governance structure of the Court; (b) oversight of internal and external audit matters; (c) follow up on previous recommendations; (d) risk management; and (e) values and ethics.

a. Governance structure of the Court

5. The Committee continued to monitor the developments on the Organizational Manual of the Court. The Manual, that was a proposal of the Committee, is a living document that provides a detailed overview of the Organizational structure of the Court. The Committee was pleased

to note that the Court had implemented the recommendations made by the AC at its thirteenth session.

b. Values and Ethics

6. At its fourth session in 2017, in line with the “One-Court principle”, the Audit Committee emphasized the need to unite all staff working for the Court around the same values, while acknowledging at the same time that it was reasonable to have organ-specific texts to describe the professional conduct expected from staff members in the exercise of specific work. The Committee continued to monitor the on-going work on the development of the Court-wide Ethics Charter, which continued during 2021. The Committee noted that the Court planned to hire a consultant to develop the statements of values until the end of 2021, contrary to the Committee’s recommendation at its fourth session of using in-house capacity.

7. Furthermore, the Committee noted that this Charter on Court-wide values will be adopted after dissemination to the Assembly. The AC recommended that the Court update it on the progress of the Court-wide

Ethics Charter and submit a time table for this project at its fifteenth session.

8. The Committee is pleased to note that the IER report issued on 30 September 2020,¹ supports at recommendation R106 the trajectory proposed by the AC in this respect.²

c. Oversight of internal audit matters

9. As part of its oversight of internal audit matters, the Committee discussed: (a) the Audit reports of the Office of Internal Audit; (b) the fleet management policy; (c) the Status of implementation of the 2021 Internal Audit Plan; (d) the Draft 2022 Internal Audit Plan; (e) the Office of Internal Audit and the Court's follow up on the outstanding recommendations from the External Assessor; and, (e) the Update on the annual performance of the Director of OIA.

10. The Committee would, first and foremost, recognize the improvement made by the OIA in their reports. Following the

¹ The Report of the Independent Experts Review dated 30 September 2020.

² **R106** *The Court should develop a single Court-wide Ethics Charter, laying down the minimum professional standards expected of all individuals working with the Court (staff, elected officials, interns and visiting professionals, external counsel and their support staff, consultants). Additional Codes of Conduct for specific roles can supplement the Court's Code of Conduct, as per the Audit Committee's recommendations. The instruments should foresee continued application of certain obligations (such as confidentiality) for officials and staff, after they leave their office or post.*

recommendation of the previous session of the Committee, the OIA started to include in its reports the recommended five elements of internal audit reporting – *the 5Cs*: condition, criteria, cause, consequence and corrective action- which has had a positive effect on the information provided to the reader of the internal audit reports.

11. At its eleventh session the Committee had recommended the Court to develop a comprehensive fleet management policy. The Committee noted that the Surface Transport Manual, which is considered to be the Policy on fleet management, will be completed by the end of the third quarter of 2021. The AC noted that fleet vehicles are mostly used in the situation countries rather than at the Headquarters (HQ), and, therefore, the management of the HQ vehicles has not been included in the Surface Transport document. The Committee also noted that the document was prepared in consultation with all stakeholders. The Audit Committee further noted that the Surface Transport Manual does not include information about vehicle leasing as an option when purchasing vehicles. Therefore, the Audit Committee requested that the Court consider including a chapter on vehicle leasing as an option when

acquiring new vehicles, and report on this to the Committee at its sixteenth session.

12. As regards the Status of implementation of the 2021 Internal Audit Plan, the Committee voiced its concern on the feasibility of implementing the Internal Audit Plan as presented, given that as at 30 June 2021, OIA had only been able to complete two out of the 12 approved audit assignments, and, as stated by the Director of OIA, at least two of the approved audit assignments will potentially be postponed to 2022. This carrying over of audit assignments from year to year has recurred every year, and the AC questioned whether the proposed number of audit assignments had significantly exceeded the capacity of OIA; or whether there were other reasons. Therefore, the Audit Committee recommended that the Director of OIA reassess the situation for the outstanding 2021 approved audit assignment and report to the Audit Committee no later than the end of August 2021 on those audit assignments that will be carried over to 2022. The report was received on 08 September 2021. As of 01 December 2021, a further two assignments had been completed.

13. Following the current delays on the status of implementation of the Internal Audit Plan for 2021 and the ambitious draft Provisional Internal Audit Plan for 2022, the Committee voiced its concern over the feasibility of its implementation. In addition, the Committee noted that some audit assignments could be merged based on their nature. Therefore, the Audit Committee suggested that the Director of OIA submit a new plan that will be provisionally approved via email communication and the plan will then be discussed thoroughly at the fifteenth AC session in March 2022.

14. The Committee continued to monitor the follow up by the OIA and the Court on the outstanding recommendations from the External Assessor noting that 22 out of the 25 recommendations issued had been implemented, or were being continuously implemented, as they become embedded in the Court's business processes; and that one (1) recommendation had not been implemented. The Audit Committee also noted that the two (2) recommendations relating to the Audit Charter were in the process of being implemented and remained unchanged as at May 2021. The Court was requested to provide an update on the status

of those outstanding recommendations that remained in progress, at the Committee's fifteenth session.

15. With regard to the annual performance of the Director of OIA, I, as Chair of the Audit Committee informed members that the Director of OIA and myself had reached agreement upon the performance objectives of the Director. I will be updating the Committee in the next session on the progress made on this process.

d. Oversight of external audit matters

16. As part of its oversight of external audit matters, the Committee discussed: (a) the Financial Statements of the Court for the year 2020; (b) the Financial Statements of the Trust Fund for Victims for the year 2020; (c) the External Auditor's report on the Pillar assessment; (d) the update on the External Auditor's workshop; (e) the Independent Expert Review of the ICC and the Review Mechanism; (f) the handover document to the new External Auditor; and, (g) the Status update of the External Auditor's Work plan proposal.

17. With regard to the Financial Statements of the Court and of the Trust Fund for Victims (TFV) for the year 2020, the Committee

observed that based on the opinion of the External Auditor, the financial statements give a fair view of the financial position of both the Court and the TFV as at 31 December 2020, as well as of their financial performance, changes in net assets and cash flow for the 12-month period ended 31 December 2020, in conformity with the International Public Sector Accounting Standards. The External Auditor did not issue any recommendations for any of the financial statements, but rather a financial report with observations, and further noted the former External Auditor's clarification that recommendations are only issued when the auditor foresees an issue or risk in the coming 12 months. The Audit Committee recommended that the Assembly approve the Financial Statements of the Court and the Financial Statements of the TFV for the year ending 31 December 2020.

18. The External Auditor's workshop took place from 24 to 25 May 2021 in The Hague, and the Chair and the Vice-Chair of the Committee participated. The Committee's Reflections on the Note were sent in writing to the convener of the External Auditor with the request that they be attached to the External Auditor's report that will be presented to the Assembly. These reflections refer in particular to the importance of the

Committee’s composition of elected experts serving on an independent basis; and of the critical function of the Executive Secretary to assist the Committee in its work, the Executive Secretary reporting directly to the Committee through its Chairperson but being administratively part of the Secretariat of the Assembly, in accordance with the resolution of the Assembly of States Parties (“the Assembly”).³

19. The Report of the former External Auditor, *le Cour des Comptes*, on ICC Governance Oversight, was submitted by close of business on the last day of the Committee session, requiring the Committee to have an additional session day to properly analyze the report. The Committee was disappointed with the unclear methodology used by the former External Auditor that has given rise to the five recommendations raised. These recommendations, if implemented, will generate problems rather than solutions as they do not follow international standards or best practices. Therefore, the Audit Committee recommended that the Assembly do **not** approve the recommendations of the former External Auditor. The Committee through its letter transmitted to the former External Auditor, addressed

³ ICC-ASP/18/Res.1.

all five recommendations of the former External Auditor and requested that the Committee's letter be annexed to the former External Auditor's final report that will be submitted to the Assembly.

20. Furthermore, the Committee appreciated the comprehensive in-session presentation provided by the new External Auditor, the Bureau of Audit and Inspection of the Republic of Korea, on the handover process and on the status of the Work Plan proposal.

21. The Committee recalled that its involvement was not invited at any stage during the review by the Group of Experts; and neither was it consulted by the Review Mechanism. Nevertheless, the AC reflected on some recommendations that are related to its mandate and function such as governance, values & ethics, risk management, and internal control, and believes that it can assist the Review Mechanism and States Parties in their discussions. The AC agrees with recommendations R3 and R107. The Committee however, raises great concern regarding recommendations R366, R367, R368 and R370 of the Independent Expert Review. In the Committee's considered view, the implementation of these recommendations will dangerously jeopardize the governance oversight structure established by the Assembly itself.

e. Follow-up on recommendations

22. The AC noted that 22 recommendations raised by the External Auditor were still pending – four (4) related to financial audits and 18 related to previous performance audits-. According to the former External Auditor, out of the 22 recommendations: (a) seven (7) had been implemented; (b) 11 were considered closed as they were similar to those issued by the IER; (c) and four (4) recommendations were partially implemented or remained open.

23. Regarding the recommendations of the OIA, the AC noted with concern that only 17 per cent of the recommendations had been implemented within the first three years and that only 37 per cent of the recommendations had been implemented by Management. According to the OIA Director, the OIA's policy closes the outstanding recommendations after five years of inactivity, unless the owner of the recommendation decides to continue with the recommendation.

24. Finally, on the recommendations of the Audit Committee, the Committee developed the 5th edition of the Register of

Recommendations (March 2021) that provides an update on the recommendations of the Committee.

II. CONCLUSION

Madam President,

25. Allow me to conclude by underlining that since its re-establishment, the Audit Committee has acted as a catalyst in triggering important improvements in many fields within its mandate, such as through an enhanced risk management framework. The Audit Committee further established a more structured follow-up on recommendations, which has contributed to the reduction of risks and the identification of risk mitigating measures. Thus, the Audit Committee has not only provided an additional layer of accountability to the Assembly, but has also given an incentive to all actors to work more closely together to achieve tangible progress in the various areas of its mandate.

I thank you for your attention.
