



Twentieth session

The Hague, 6-11 December 2021

**FINAL REPORT
ON THE INTERNATIONAL CRIMINAL COURT GOVERNANCE
OVERSIGHT**

Addendum

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* Re-issued for technical reasons.

ANNEX 1: TERMS OF REFERENCE

This exercise is a response to Resolution ICC-ASP/18/Res.1 of 6 December 2019, by which the Assembly of States Parties welcomed a proposal that the External Auditor conduct an assessment of the oversight bodies of the Court (as part of its 2020 programme of work and in place of its annual performance audit), and recommend possible actions on their respective mandates and reporting lines

SCOPE

The bodies currently engaged in the oversight of the Court are:

- The Supreme Governing body (Assembly of States Parties, and its dependencies or functional delegates: Bureau, Hague Working Group, Facilitators), its subordinate bodies:
 - o The Committee on Budget and Finance
 - o The Audit Committee
- The Independent Oversight Mechanism
- The Office of Internal Audit.

The scope of the mission embraces these entities, and covers all the provisions and practices establishing their composition, competences, mandates and hierarchical/reporting lines established between them, whatever their level or legal nature.

OBJECTIVE

The objective of the mission is threefold:

- Assess the effectiveness and technical efficiency of the current ICC oversight framework¹ and, if necessary, identify its shortcomings;
- Examine the extent to which this system meets the needs of States Parties, in particular in the area of monitoring the coherence between the Court's missions and the budgetary resources allocated to the Organisation by the ASP, and more generally, in terms of transparency for the States Parties;
- Propose to the ASP, where appropriate, alternative provisions to enhance the transparency and efficiency of the oversight mechanism for States Parties and to strengthen their governing powers, while taking into account the principles of the Court's independence laid down by the Rome Statute

METHOD

The work will comprise desk reviews and on-site actions. The mission will liaise with the Independent Expert Review on the matters at stake. It will be structured around four successive phases:

- 1) A preliminary review of the Organisation of the Court's oversight arrangements (mandates, staffing and budgetary resources, reporting lines), and an assessment of their compliance with the standards and best practices in force in other international organizations;
- 2) The Organisation, with the support of the ASP Secretariat, of a Workshop bringing together representatives of the oversight entities concerned, and the governing body (through its dependencies and relevant facilitators). The participants will be invited to react on a preliminary working paper that will present the External Auditor's analysis of the existing

¹ This includes the efficiency of reporting lines and flow of information between the governing bodies (ASP, Bureau, Hague Working Group) and the oversight entities (CBF, Audit Committee, OIA and IOM), but does not include the effectiveness and technical efficiency of the oversight entities themselves.

framework and suggest possible courses of action in view of improving and/or reorganising the current oversight system. This document should be mainly based on the elements collected during the initial review phase; a specific report will wrap up and synthesize the outcome of the Workshop and will be shared with all participants for amendments and/or comments;

3) Individual interviews will then be organised with the Chairs of the CBF and of the Audit Committee, with the heads of OIA and IOM, and the Heads of the Court's organs (President, Prosecutor and Registrar), to collect their views, feedback and possible inputs on the outcome of phase 2; the mission might also make contacts with delegations of the Hague Working Group to collect their views before finalizing an interim report;

4) The aim of the fourth phase is to issue the interim report by end of July 2020 to be shared with all interested audited parties for clearance.

The final report will be sent directly to the ASP for consideration. In addition to the External Auditor's analyses, observations and recommendations on the various possible options and their respective merits, it will provide in annex the synthesis of the outcome of the Workshop and a verbatim of the comments made by the Heads of organs during the third phase.

SCHEDULE

The preliminary working paper for the Workshop will be sent at the beginning of April 2020 to the Secretariat of the ASP with a request to dispatch it to the expected participants. Concurrently a series of interviews with key stakeholders and/or resource-persons will take place. The Workshop should take place in the first half of May. The wrap up report of the Workshop will be circulated to participants, who will have an opportunity to provide their additional comments/input until mid-June.

An on-site two-weeks mission will be scheduled at dates to be determined with key resource-persons, tentatively and in principle during June/July 2020.

PREPARATION AND SUBMISSION OF THE REPORT

Insofar as it deals, *inter alia*, with the Organisation, mandates and activity of the CBF and the Audit Committee, the final report will be directly forwarded to the ASP with a recommendation not to require the usual pre-examination by these subordinate committees given that their views on the External Auditor's conclusions will be accurately and faithfully reflected in this report.

The mission will be conducted in such a way and under such a planning that the final report be sent to the ASP in due time for consideration and discussion at its December 2020 session.

ANNEX 2: LIST OF PARTICIPANTS TO THE WORKSHOP

Representatives of States Parties

1. Silvia Fernandez (ASP Chair)
2. Annika Markovic (ex-Budget Management Oversight focal point)
3. William Roelants de Stappers (BOMF)
4. Katerina Sequensova (ASP, THWG)
5. Martin Pizinger (K. Sequensova's legal advisor)
6. Frances Lanitou-Williams (Budget Facilitator)
7. Giorgos Samouel (Deputy Head of Mission – Cyprus)
8. Päivi Kaukoranta (IOM Facilitator)

Representatives of CBF and AC

9. Werner Druml (CBF Chair)
10. Margaret Shava (CA Chair)
11. Aiman Ibrahim Hija (AC-Vice-Chair)
12. Carolina Fernandez Opazo (CBF Vice-Chair)

The ASP and CBF/AC Secretariat

13. Renan Villacis, Director
14. Fakhri Dajani, Executive Secretary of CBF and AC

Internal audit

15. Florence Bole, Director

Independent Oversight Mechanism (IOM)

16. Saklaine Hedaraly, Head of IOM

Presidency

17. Piotr Hofmanski (ICC President)
18. Hiram Abtahi (Chef de cabinet of the Presidency)

Office of the Prosecutor

19. James Stewart (Deputy Prosecutor)
20. Marco Blasi (Head of Services Section)

Registry

21. Ivan Alippi (Head of Direction of Management Services)
22. Osvaldo Zavala Giler, Special Assistant to the Registrar

ANNEX 3: MINUTES OF THE WORKSHOP

The Hague, 24-25 May 2021.

24 May 2021: 10.00 am opening session

Michel Camoin, director of external audit, introduces the session and gives the floor to amb. Annika Markovic.

Annika Markovic: so nice to finally have an in-person meeting, I am really happy that ICC opened its premises for us. I am the outgoing Facilitator for the budget management oversight. This idea to ask the EA to present suggestions was decided under my facilitation.

A few words on the background: decision of the ASP was taken one and a half years ago: We asked the EA to look at the mandate and the flow of information from the different oversight mechanisms from a States Parties perspective. More or less answering the question “do we have the right oversight system in place to ensure the States Parties (SPs) that the ICC is working in a cost-effective manner that everything is working well in the Court”? It is a dual perspective, including States Parties and management. This Workshop was postponed many times because of Covid. I am really looking forward to the discussion. What I expect from you today is that even if you are representing different parts of the Court and SPs, try to be as informal as possible. Speak your mind. The EA need this, to have the best impressions and recommendations. Of course, recommendations from the EA could be that everything works fine and that we don’t need to change anything. We also have the Independent Expert Review, whose recommendations also concern the area we will discuss: this is not a competing but a complementary exercise that we asked the EA to conduct for us. Welcome to this Workshop (and pls don’t use titles !)

Michel Camoin: thank you Annika for this presentation. You see, sitting on my right, Francis Saudubray, who will be in charge of our last management audit, an organic audit which will cover the Offices of the Presidency and the Prosecutor. We hope it will be finished by end of July – our Korean successors will arrive in September.

Now, we will discuss 10 questions to which we need your answers. We try to go from the easiest to the most difficult.

Three questions this morning. Coffee break 10-20 minutes. Lunch break at 12h30. We will start again at 1h30. For each question, our agenda dedicates a certain amount of time. Questions and reactions are welcome within the time schedule – altogether, we should end by 12h30 tomorrow.

Margaret Shava: just a brief remark to let you know that the Audit Committee has prepared reflexions that will be made available at the end of the session.

Question No. 1: Do the participants agree with the understanding of the objective of the mandate?

Michel Camoin: the first question is the understanding of the objective of the mandate. As Annika said, the mandate is to be understood from the SPs’ point of view. Is the oversight system adequate so that the ASP can play fully its role as ICC superior oversight body?

The mandate mentions “evaluation”, but we are not going to evaluate the AC or the CBF. The point is to understand whether SPs have direct, efficient and transparent access to the work and the conclusions of AC and CBF, not to evaluate their reports. As External Auditors, if at the end of the Workshop, there is a consensus, we will act as pure notaries and state that everyone agrees on the conclusions, with no particular input from us. If not, if there are different views, our input will be EA recommendations based on your answers and on our own experience of best practices that we have seen in other Organisations. Of course, there is some limitation there since most other Organisations we audit are not criminal courts (with two exceptions: ICJ and ECHR).

Werner Druml (Webex): as new chair of the CBF, I would like to thank you for organizing this Workshop and offering the occasion to jointly reflect on these issues, and also to thank Annika Markovic for initiating that. Unfortunately, I could not travel, but Margaret, who is also an active member of the CBF, will attend this important meeting. All questions are equally important to AC and CBF as independent expert bodies. The CBF has studied your paper and your questions, we have responded in writing and will ask you to attach it to the report to the ASP.

Michel Camoin: thank you Werner, we understand that Margaret Shava will be the main person in charge of answering not only for the AC but also for the CBF, and your document will of course be attached to our report when we are finished. If after the Workshop, you want to modify your own analysis, you are welcome to do so. Again, this mandate is an evaluation of the system, not of its parts. How the system performs altogether, seen from the SPs point of view. That could lead, as Annika said, to saying at the end that we have lived many years with this system which is not perfect, but works. In which case we will advise to leave things as they are.

Otherwise, we know it is difficult to come to a consensus, so we will first see how to improve the system without altering the rules, acting only on their implementation. But we might also think of some reforms that would need adapting internal written rules (CBF, AC...), remaining within decisions that depend on the organs of the Court, or on the Assembly.

We do not foresee higher level reforms: we read the Independent Experts Review, and we can see they made some suggestions that in our view could hardly be implemented without implying changes to the Rome Statute. We will evoke them, but not recommend them, because as EA, we don't think they are part of our mandate. Does everyone agree to this interpretation of our mandate?

James Stewart: Thank you Michel. I noted that Annika said that this exercise is a complementary exercise to the Independent Expert Review process. From my perspective, as Deputy Prosecutor, and I suspect on behalf of everybody, is that it is a welcome approach. The Court has given an overall response to the IER report. It contains views, which will be relevant to this exercise, and this exercise should contribute to the IER process.

My last point is quite obvious: we are a Court, but with a difference – we are part of a whole system of international criminal justice but, different from the ad hoc international criminal tribunals, as we are permanent. In the other courts cited just now, judges receive arguments from States in hearings and decide upon them, whereas we screen information that comes to us, we investigate crimes in the field and from HQ; we depend on the cooperation of SPs to arrest people. When those arrests occur, we bring prosecutions before the judges of the Court. It is really a self-contained system of international criminal justice, and it is important to remember this specific character of the ICC.

Margaret Shava: I agree with what James has just said on the very unique character of the Court. What the AC and the CBF do is to assist the SPs with technical expertise. Having said this, I would just like to recall what is said in the note: we really did not understand what the problems were, and we hope it will come out in the discussion and that it will become clearer to us during this Workshop.

Francis Saudubray: just to mention that there are two human rights principles which were acted in the UDHR in 1946: the first one is the independence of judiciary, but the other one is accountability when managing public funds. We need to find a balance between these two principles.

Annika Markovic: I should probably have mentioned a little bit more on the background of this decision of the ASP. What I encountered in 2019 starting my facilitation role is that, like other IOs, you have an EA who carries out performance audits from the outside on behalf of SPs. Then you have the IA that does more or less the same for the internal management of the Court, and gives advices on how to run the business in the most efficient and effective manner. Then you have IOM, reporting directly to the SPs and performing evaluations. Then the two committees, AC and CBF, whose members are elected by and reporting to the ASP.

This is the setup of many IOs. But when I started to discuss the matter with my colleagues, I found that some of them had a blurred understanding, and thought there were too many auditors. Is there really a need for all these entities? Was the question some asked. Maybe. But for the SPs, generally speaking, that was not clear. This discussion should check that this system doesn't cost too much to SPs, do we really need so many auditors. The same goes for the CBF, scrutinizing the budget proposal for us and giving advice to SPs on budget proposals. Then comes the budget facilitation, for which Frances is now in charge, and in this position you realize there is not a great understanding of the role of the CBF. We end up negotiating parts of the budget even though CBF has already given advice on that part. In my opinion, there is a lack of understanding from SPs. So it is a good idea to have an external opinion on the best way to implement our oversight mechanism. We found it opportune to ask the EA, the Cour des comptes of France, to do this exercise, because they are not speaking in their own interest as they are leaving, and because they know the Court well since they have been the EA for an extended period.

Michel Camoin: Annika answered clearly Margaret's question. What matters is not who you are, from which part of the system you come from but how the system communicates and manages to be understood and used by the ASP. I understand from what everyone said that there is a consensus on the understanding of the mandate. I suggest a 10-minutes break. Everyone be back at 11.

(10-minutes coffee break)

Question No. 2: Do the participants agree with the description of the present ICC governance oversight mechanism and of its stakeholders?

Michel Camoin: the highest body of the governance oversight system is the ASP. This is where the oversight starts and where it ends. Then, there are two subsidiary bodies that explore the governance, and bring their conclusions directly to the ASP: these two bodies are the CBF and the AC. In the ICC, these two committees are composed of expert, nominated by the SPs. Next, internally, to assist the three organs (OTP / Presidency / Registry), you have the Office of Internal Audit. But in the case of ICC, there is another oversight organ that has a direct link with the SPs, which is the IOM. So altogether, there is no particular lack of bodies who are in charge of the oversight.

One problem specific to the ICC is that the superior organ meets only one week per year in December. One week to take major decisions, including the budget. That might be one of the reasons why the system does not work as effectively as in other Organisations. It is clear that the ASP partially solved the problem by creating the Bureau and the Hague Working Group, which are permanent organs of the ASP. As we will see in later questions, this system does not seem to work seamlessly with the two ASP subsidiary bodies, which are the CBF and the AC. This description I made covers all the stakeholders of the governance oversight mechanism of the Court, except the External audit: the ASP, with on one side its permanent organs, and on the other side its subsidiary expert bodies, AC and CBF; plus the very specific position of the IOM, which in the case of the Court, is a very small organ and which probably hasn't completely found its right place in the system. We will discuss that in later questions. At this stage, do you agree with this understanding of the system or did we forget anything? Do you consider other organs have a part in the oversight system?

Saklaine Hedaraly: I find it difficult to agree with your description of the system. If you look at the mandate of the IOM (Annex II to Resolution ASP-CPI/19/Res.6), its very first sentence describes it as a subsidiary body of the ASP. It is very different from the CBF as a subsidiary body of the ASP, but also from the OIA, which is not a subsidiary body of the ASP. These bodies were completely independent in the Rome Statute (art. 112-4)². We need to make a distinction between the roles of IOM and OIA. I think there is a reason why IOM finds its place in the Statute, and not the IA. I am also not sure about the statement that mentions investigation and ethics, could you please clarify? As to your comment on whether

² Art. 112-4: "The Assembly may establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy."

the IOM found its right place or not, I think we made some progress during the last year. It is very recent, the mandate was revised recently, but I think it has a clear role to play.

Michel Camoin: Thank you Saklaine. Could you please send us this in writing? Of course you are right from an institutional point of view, you have a clear mandate. It is only by comparison with other OI, there are other possibilities for the relationship between the IOM and the rest of the oversight system. You are directly reporting to the ASP. But when you see it from a functional side, it is clear that the role dedicated to IOM might not be sustainable (budgetary limitations). It is a problem of size; the Court is not large compared to other IOs. In larger Organisations, it could make sense to have an IOM that is completely independent because the financing is sufficient. In the case of the Court, it was decided from the origin, but maybe it was not completely effective. Since you are reporting to the ASP, what is the opinion of the ASP on the importance of the input of the IOM? Remember Annika, you said we must speak openly.

Annika Markovic: this is exactly one of the questions the colleagues have been asking me. Why do we need three organs reporting to the ASP doing performance audits? We have the EA, you do 2 or 3 performance audits per year and you report directly to the ASP. Then the IOM, you manage to do 1 to 3 evaluations, and you report straight to the ASP. OIA does performance audits as well and reports to the ASP through the AC. What is the specific role of IOM, OIA, EA?

Michel Camoin: maybe it is too early at this stage, but we must keep that in mind. As Saklaine reminded, you have three oversight organs who report to ASP and one oversight organ who does not. This is different in most other Organisations. In the case of ICC, only the IA is reporting indirectly, all the other oversight organs are supposed to report directly to a body, the ASP, that meets once a year. This reporting cannot lead to adequate ASP decisions, it comes too late. In fact, all the systems that report to the ASP have no real counterpart. When, as External Auditors, we audited the budget process, we saw that the oversight process starts in May/June – the executive organs prepare and submit an initial proposal, then comes the CBF for two weeks, and starts making a “haircut” of the budget with each executive entity. Before they start, they have a meeting with the Budget Facilitator, whose usual message is “zero net growth”. The experts work on that basis and deliver their report in September, after having held a second meeting with the Budget Facilitator. Then the report goes to the ASP – in fact, to the Hague Working Group on budget, who is supposed to rely on the CBF report. Late October/beginning of November, CBF disappears, IOM and OIA do not exist in this process (neither do we as EA): it is time for direct discussions between the Budget Working Group (Ivan Alippi) and The Hague Working Group (Budget). The BWG’s initial proposal is probably based on more resources than what the ICC really needs, in order that the dual haircut (CBF + HWG) be not too painful. Then there are discussions between the budget facilitator and SP delegates belonging to various groups within the ASP – the “like-minded” and the “hard-liners” –, with different views on the budget. Real decisive discussions go on during autumn. At that stage, technical efficiency is no longer an issue, the process becomes purely political. At the end of the day, thanks to budget facilitator, there is consensus on the budget before the ASP meets beginning of December. The technical oversight has completely dissolved in the process. So there is a theoretical technical phase including the CBF, which starts before summer and is forgotten by the end of mid-autumn. As a witness, I think this is not satisfactory for anyone. The ASP has no opportunity to see the technical link between the missions of the Court and the budget they will have to adopt. I think it is also bad for the Court, and in particular for the Registry that has to protect the ICC budget, knowing they will have to implement it. They have problems every year doing so. As an EA, I can assure you this system does not work properly from a purely technical point of view. Processes follow each other and are not sufficiently linked together. Taking in the correction made by Saklaine on the exact position of the IOM, I think we can all agree on that. That is the question n°2.

Oswaldo Zavala Giler: Thank you Chair. Could you clarify what do you mean by « report directly to the ASP »? From the Court point of view, we understand that the CBF reports to the ASP, the AC through the CBF to the ASP, and the IOM reports to the ASP, including through the President of the ASP. These are what we call subsidiary bodies. Question on the last bullet point, which concerns the HWG and the Facilitators: we see the Bureau as a

governing body acting on behalf of the ASP throughout the year. It has intersessional mandates through resolutions of the ASP. The HWG and the NYWG are working groups of the Bureau which basically coordinate the work of the Bureau in advance to the ASP session. The Facilitators are informal coordinators and facilitate substantive issues assigned to the HWG. I think it is important to clarify the nature of these mechanisms, their respective functions, but also their structure before understanding their role. Going back to the first point, the Independent Experts Review recommendations include EAs in the governance oversight system. This has been excluded for the purpose of this exercise. The Ambassador mentioned performance audits, in which the EA also plays a role. Could you clarify why has the EA been excluded, in the light of this overlap of functions?

Michel Camoin: formally, you are right. HWG and NYWG, formally, are subsidiary bodies of the Bureau. This is not what I have seen through the papers: the HWG seems to work as if they were a delegation of the ASP. When I take the minutes of their meetings, I don't see the Bureau, but a preparation of the final decision of the ASP. Who is doing the work in reality? There, I think we can consider the HWG reports directly to the ASP in practice. In the case of the AC and the CBF, it is also something quite formal. There is every year a report of the chair of both committees to the ASP. In the next section, we will see there is a problem of relationship. At that stage, we will consider they speak once a year but that the contacts are very thin outside of that official reporting. Please send a paper to Ouardia to remind her what you think of the institutional relationships. For the moment, we can work on the basis of the presentation we made.

Aiman Hija: there are two things to keep in mind: what is mandated by international standards, ISAs, INTOSAI, etc. and through decisions the ASP is authorized to take according to the Rome Statute. On the point of independence, we know our EAs are leaving, and I am not questioning their competence. But for example, concerning independence, appearance is a key point. According to the INTOSAI, appearance of independence is as important as independence in substance. Concerning the functions of OIA and IOM, my point is that according to the ISA, what can be done by the External Auditors should be given the priority. The ASP has authority, like in other IOs (FAO), but is this the right thing to do? This is a point I would like us to keep in mind during the discussions.

Margaret Shava: I would like to point out that as AC and CBF, we are transparent to the SPs. We submit reports, we try to be helpful and are helpful according to the feedback from the SP. What are the areas where we can improve our support to the ASP?

Secondly, both the AC and CBF meet twice a year (now on Zoom). The work has been going on and has intensified, we added extra time to the online meetings. Each of the committee meets twice a year, you can say it is important within the budgetary cycle. When they meet, they meet with the Budget Facilitator and exchange with the staff. Perhaps the ASP, as the EA has pointed out, doesn't claim much because the foundations have been laid during these meetings. The work goes on throughout the year with the ASP through the BF, there is an opportunity for questions and these questions are answered. I don't see a lack of responsiveness or transparency, or any of that sort of thing. I would like to hear about the specific areas or cases where improvements can be made to assist better the ASP.

James Stewart: Briefly coming back to Saklaine's point. The independence of the IOM and its direct reporting line to the ASP is valuable not only to the ASP but also the ICC itself, and to the OTP. On occasions, we have to deal with allegations of misconduct. In such cases, it is very useful for us to refer to such an independent body to investigate before taking action. Useful for individual members of the staff, and sometimes to the Prosecutor herself. I want us to reinforce this notion of the unique value of the IOM.

Michel Camoin: I note that in the example you give, it makes no difference to whom the IOM reports, as long as it does the investigation work you mention.

Frances Lanitou-Williams: Preliminary reaction to a point you raised on « processes not sufficiently linked together ». I just assumed the role of CBF, but this is not the impression that I have, allow me to disagree with you assessment. I would like to return to this point later if I may, but this is just an initial reaction.

Michel Camoin: Thank you Frances. By the way, I forgot to mention that the system of the Facilitator is quite original, not found in so many IO. I think it is something that was created here because there is a need. There is usually no need for that kind of informal facilitation process. I think the Court should keep it even if we find a better way to link the processes. Frances, on the separation of processes, we will see in the next questions and you will have an occasion to elaborate.

I have not completely answered the question on the exclusion of the EA of the oversight. In a “normal” mandate, EA is included in the governance oversight. The first thing EA does is delivering opinion on financial statements, which is of course an important and unique part of the oversight. But we also do something that not all EAs do, but which is part of our mandate, i.e. management audits. For that, we are not completely tied by risk assessments as is the case for the IA in its role of adviser to the executive. In our case, it is more oriented to the SP needs, and on the points on which they want more information, and they are not necessarily risk-based (travels, procurement, budget process...). That is why we occupy a very specific position in the oversight system. Usually, we act as part of the governance oversight, but not in this particular mandate, for which we report exclusively and directly to the ASP – the AC and the CBF will not have to give, as they usually do, their opinion on what we will report. When we report on financial or management issues, then AC and CBF are invited to give to the ASP their own opinion on our recommendations. In this particular case, everyone here, including AC and CBF, will be part of the clearance process, which is different. And we will address to the ASP a report including all the expressed positions. Do you all agree? Maybe Margaret does not?

Margaret Shava: do we agree with this presentation excluding the EA? When CBF is meeting, we do meet as part of that clearance process. My question then becomes: what is the underlying authority, the decision of the ASP? There is a bit of confusion on the oversight of the EA.

Saklaine Hedaraly: at this point, I think it gets a little confusing. What you describe as management audits are similar to the evaluations we perform (on TFV, not risk-based but at request of the ASP). It is very problematic to outline an oversight mechanism that excludes one of its key pieces. For the sake of transparency, I think it should be mentioned that the EA is part of the process and why it has been excluded from this exercise. On performance audits, this means we will discuss IOM and OIA but not EA. There is a need for transparency to give credibility to our assessment of the process for the ASP.

Michel Camoin: Saklaine and Margaret, you are pointing in the same direction, we will explain to the ASP why we excluded ourselves from the scope in this case and not in any other case. Not that we cannot describe our role, but we won’t report to AC and CBF and won’t ask for their opinion on our final report. This doesn’t mean there is not a clearance process including AC and CBF, but that the final report won’t be discussed. I agree that for transparency reasons, we should mention it in the report. Question 2 resolved, with a question mark on EA.

<p>Question No. 3: Do the participants agree with the description of the present relationships between the ASP and the ICC governance oversight mechanism and their weaknesses?</p>
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Michel Camoin: in this third question, we try to describe the reporting lines more in detail, and the type of mutual information currently exchanged between SPs and their oversight bodies (ASP, HWG, NYWG / AC, CBF, IA, IOM). What we see (it is of course a simplified view) is a very specific role of the Secretariat of the ASP, who is also in charge of the executive secretariat of CBF and AC. This is the first channel through which information flows. The second one is the Budget Facilitator, which is a facilitator for HWG whose role, as we said, is quite informal. Then we have the Budget Management Oversight focal point, also appointed by the HWG.

Let us first take the Secretariat of the ASP / CBF / AC and look how this is organized. Based on the most recent decisions, the question has been discussed several times by the HWG, about who reports to whom, how does it work? To be frank, the present situation seems to reflect more individual profiles, which are of course important, but which cannot replace the system itself: there is no clear reporting line within the secretariat. On one hand, there is the

head of the Secretariat, Renan, on the other hand, the executive secretariat of the AC and of the CBF, Fakhri. When one reads it, it is not clear: Fakhri reports to Renan but also doesn't. If one wants to have something not clear, this is exactly what one should do: mixing the reporting lines, not knowing who at the end of the day is responsible. Second question, but I don't think it is as important: what is the position of AC relatively to CBF? The most recent decision is also not very clear. It seems to indicate that the AC is a sub-body of CBF, but at the same time, indicates that the AC reports directly to the ASP. I don't think it is very important, but it should be clarified. The last elements are the Budget Facilitator and Budget Management Oversight focal point: the problem for the Budget Facilitator is that, before the CBF starts working on the budget proposal, there is a first meeting, as Margaret reminded us, and that there is a second and last discussion just before CBF delivers its own written report. A previous Budget Facilitator (Amb. Marlene Bonnici) told us she considered there was no real communication between herself and the CBF. In our report on the budget process, we took it as she declared, that means there was minimal information exchanged, and one couldn't say the process was working seamlessly between the SPs and the CBF through the Budget Facilitator. Finally, concerning the Budget Management Oversight focal point, Amb. Annika Markovic could explain where the reporting lines start from, but not where they are going. Comments on question 3?

Margaret Shava: I will mention several areas. I'll start with the communication with the Budget Facilitator. The CBF communicates regularly with the Budget Facilitator, including about this Workshop. With regard to reporting lines, it is my understanding that the executive secretary position was created by the ASP with the view that these committees report directly to the ASP and that therefore their independence was important. There is support from Renan in our meetings. There is administrative support, but technically, the Bureau is not involved. With regard to the reporting line CBF and AC to the ASP: the audit committee has had the opportunity to report directly to the ASP. That is their decision to present themselves in the commission or not. Minimal communication with the Budget Management Oversight focal point: essentially, I do not think there is a lack of transparency of both committees to the ASP.

Michel Camoin: again Margaret, please put in writing your point on the reporting lines within the Secretariat, on behalf of the CBF and AC

Annika Markovic: on paper, CBF and AC are on the same level. But to my understanding, the AC reports to ASP always have to go through CBF: that is why the AC is perceived as a subsidiary body of the CBF. When I started with the Budget Oversight facilitation, I asked questions on whether it would be considered proper that AC would have to go through CBF with their report before sending it to the ASP. I was told that CBF would never interfere, and that the report goes through the CBF as written by AC. This is where I have a question mark: isn't it more proper to have the AC report presented straight to the ASP? I asked the Bureau to invite the chair of AC to present its report because I think it is important that SPs have a direct interaction with AC, not just getting the report and interacting with the CBF chair. I would rather prefer to have separate reporting lines to the ASP that would make the AC more independent. Some colleagues have asked if CBF could not also perform duties for the AC, which was actually the case before (AC was reinstated not long ago). Before that, CBF performed both the scrutiny of the budget proposal and the discussion of the audit reports: would that be an opportunity to go back to a more simple way of handling questions with only one committee? I find the idea of separating the two committees better, but then AC should report straight to the ASP.

Frances Lanitou-Williams: preliminary thoughts on how I understand the role of the Budget Facilitator: yes there is a calendar with key dates, but it is a continuous process. As soon as the Budget Facilitator assumes this role, he or she has to remain engaged from the beginning, which is early May, to the very end in December. We need to remain engaged with all stakeholders. We need keep these lines of communication, formal or informal, open throughout the calendar year, and we have to remain engaged: there is a lot of sharing information, a lot of updating information as we go along. It is not as if we met once at the beginning and we wrap up at the end, this is a continuous process.

Michel Camoin: thank you Frances. To be precise on that point, when I had a discussion with one of your predecessors, she said exactly the contrary: she met the CBF when they started, then she didn't see them for two months, then she met them again half an hour to have a flavour of the report they were finalizing, then she saw the report and started working on it. It may be the institutions work in different ways, since we have two different descriptions of the same topic.

Frances Lanitou-Williams: even before the first meeting with the HWG in May, I started a first round of consultation before the HWG started working, and met with 40-50 stakeholders. CBF, Secretariat, executive organs, SPs... You begin the process by engaging and remaining engaged. Perhaps I only just started this task, but my initial impression is that it's sufficiently linked together. I can see the links very much.

Michel Camoin: seen from an auditor's point of view, we always tend to have some doubts on functions which depend on who is in charge. There is a need for procedures, otherwise it gives no guarantee as a system. Of course, the system can be more or less fluent depending on the persons in charge. You may be right on what needs to be done, but it would need to be defined very clearly as a process. It may mean that the role of the Budget Facilitator should be described in more detail for your successor.

Carolina Fernandez Opazo (WebEx): Thank you Michel. First, regarding the Budget Facilitator, it actually does depend on the individual who takes the job. I chaired the CBF for three years and the communication with the Budget Facilitator was constant. There can be many exchanges sometimes, but not as a system, so I understand your point. We have to take into consideration that CBF and Budget Facilitator are two different processes. CBF on technical issues, Budget Facilitator in charge of political negotiation. Of course, when there are many questions about our recommendations, we always have been open to answer them. The meetings with the HWG are open to all SPs, but not all of them do participate. There are SPs that actually have questions, others that don't come – there is an agreed number of participants on these meetings. It is the Budget Facilitator's job to ease the way for negotiations. Regarding the AC, I understand what Annika is saying: when it was first created, we had two or three reports that were not as we expected. We then asked the ASP to abolish the AC. Later on, it was the EA who insisted that AC be reinstated, and the ASP took action. It is within our mandate to look at all administrative, budgetary and financial matters of the ICC, we do not change a word of the work but we look at it. This is why AC reports to CBF, it is just a question of streamlining on the report, it is our mandate to look at these issues. Of course, the ASP has the right to change anything they set up. We are only an advisory body, and we take our mandate very seriously. We are more than willing to follow the mandate given by the ASP.

Michel Camoin: Thank you Carolina. It's very helpful. The fact that the AC was created, abolished and reinstated shows in itself that it is problematic to decide what is the exact place of each committee in the system. Personally, I think the AC and CBF play different roles. Another problem we have to deal with, specific to the ICC, is that the budget cannot be purely understood as a technical issue. It is difficult to make a distinction between missions and budget, but the CBF cannot discuss the missions of the Court. The CBF does not have access to all the needed information to give a completely, purely technical decision. This technical decision could be purely budgetary and financial seen from the CBF, whereas seen from ASP, it would be a mix between financial constraints and political will on the missions of the Court. By the way, this a problem with any justice department seen from the ministry of finance: for the latter, it is just an expense category, but you don't decide the level of criminality, it is given by the society then you adapt your budget. In the case of CBF you just have a budget, you see 66% is staff, procurement is 15%, etc.: for the CBF it is technical data, while the SPs won't think in terms of staffing and procurement, they will just consider if it is adapted to the missions of the Court and if they can accept the cost. There is difficulty with the many "drivers" (number of hearings, witnesses...) from which the budget is in principle deducted by the OTP and the Registry through the internal Budget Working Group. But then, you forget the drivers and look at the budget as a financial object. That is why there is no continuity in the process: it starts very politically, gets technical, and ends by a political

decision. This is where we have to see whether some improvements can be brought in the oversight system.

I think at that stage, there is no consensus on the fact that there is a lack of transparency (Margaret's position in particular). We will have to see whether we can be more precise in the opinion.

Aiman Hija: Thank you Chair. On the first point about the Secretariat, this is a typical situation in the UN. In FAO, I have this case in finance: the secretariat of the finance committee, the secretariat of the Conference, and the head of the committee union of FAO are both administratively under the finance division. This is just for the sake of not hiring staff. The actual reporting, the actual evaluation of performance is achieved by the finance committee. My role is limited to administrative aspects, that's all. This is also the case in the private sector, at the World Bank. The finance officer officially reports to the director of the division, but technically, he reports to the regional financial manager and so on. This is not specific to the ICC. You have the secretariat, the management, etc. For the audit committee, as Annika said, the functions could be given in practice to the CBF. But it is not just the audit functions to be done. I don't understand the problem in ICC. In FAO, when there are issues for the Budget Facilitation, the chair of the finance committee holds individual meetings with diplomats and asks openly « what is your government position on this, what can be done... ». I don't understand what is the problem with the Budget Facilitator here.

Michel Camoin: Thank you Ayman. I think you are hinting some subjects that we will further explore in next questions. It is true that the relationship you mention between operational and administrative concerns exists everywhere, but in the case of the Court, the problem is that it is completely mixed. Usually, in other Organisations, the major budget "driver" is financial, you can derive from it what will be the output. It doesn't work that way in a court, especially a criminal court. This is why we can't refer entirely to other Organisations or even courts, other examples might be misleading in that respect

Margaret Shava: Thank you Michel. First of all, a comment on the adequacy of information. Experts of the CBF focus on HR, ICT, etc. and we are able to answer questions. We work, as you know, sometimes in open and sometimes in close sessions, during which SPs will come to us. As Carolina mentioned, the EA recommended in 2014 the reinstatement of the AC, approved by the ASP in 2015. Previously, 3 of the members were ICC principals. Now 2 members of the AC are CBF members, to help with the flow of information. As Aiman has pointed out, we have a technical point of view, and CBF sits for 10 continuous working days during summer, which is a lot. AC produces a report the CBF can look at, ask questions about...

Michel Camoin: Thank you Margaret. The fact that there are common members of committees is not unique to ICC. It exists in other IO and it is clearly a good solution which solves part of the problems.

Ivan Alippi: Thank you Michel. As we see it from inside of the Court, I can say that my office coordinates all the work with CBF, AC, EA and IA, as well as answers to questions from oversight bodies or preparation of reports to address their recommendations, we see some benefits from the presence of CBF members in the AC. It doesn't mean they do the same work twice, they share information and increase coordination between the CBF and AC in carrying out their respective mandates. Similarly, we see the value of the interaction between the CBF and the budget facilitator, who has the opportunity to attend CBF sessions on budget. The CBF always plays a role on financial and/or budgetary matters. For example: when the ICC building was constructed, there was an oversight committee on the permanent premises established by States Parties that was reporting to the CBF on financial matters. There is review or interaction with the experts (CBF) whenever there is a decision with financial impact.

William Roelants de Stappers (WebEx): one or two comments not so much in respect to my future capacity, which is not confirmed yet, but in the pragmatic perspective of an active delegation since two years. On the budget process, aside from the specific context between facilitators and CBF, my perception of the process is the same as what was presented by

Frances. On the circulation of information and transparency, I don't see any problem. I am not saying that on the issue at hand, adaptations to the more general oversight should be brought fundamentally or "à la marge", we perceive that, but I wanted to make the following point: I think it works. We should also observe that since a year, we have changed our methods. It is perhaps easier to organize informal, bilateral or small group meetings. The Facilitator has been very active, and I have certainly been one of those 50 stakeholders she has been in touch with, more than once. My second point is that HWG, of course, does not represent all SPs, but I think it's even more the case for budget discussions. There are 15 to 20 "active" delegations, a little bit more are followers who do not intervene. There is an element of pedagogy to make delegations, as much as possible, aware of these complex issues and specialised matters. I think there is an element of democracy at stake here. Few delegations are really aware of the problematics of the Court.

Annika Markovic: a quick comment on the relationship between CBF and SPs. I believe that CBF does an important and very good job on scrutinizing the budget proposal, but that the impact on its work on the final budget decision of the ASP is quite limited. As Michel said, the Court's budget is based on a political assessment, and the CBF does a technical scrutiny on a political budget, and facilitation is again political. I think this is one of the challenges is interaction between the CBF and the SPs: I know it works well with the Budget Facilitator, but not the SPs. How to improve that? I think it would be useful for the SPs to have a better understanding of the budget proposal.

(Lunch break)

James Stewart: concerning budget processes and technical processes, for the OTP, the preparation of the budget really depends on the level of criminality the Court expects to have to deal with, according to the Statute. In our view, this is not a political process, but a technical one.

Michel Camoin: The new chair of the ASP has just joined us and would like to say some preliminary words.

Silvia Fernandez: it is a great pleasure to join you for this important Workshop organized by the EA. Because of the time difference with Buenos Aires, I am joining you this afternoon. I want to greet all the participants in this important Workshop and thank you for participating. This Workshop has been requested by the ASP in order to have a greater insight into the roles of the governance oversight bodies, their respective mandates and reporting lines. I am confident that this work will provide a contribution to the wider review of the ICC and the Rome Statute system. As you know, this is a time of transition for the Court. As I have emphasized, this is a top priority for myself: I am committed to promoting and supporting the review process, and I am confident the Rome system will be more robust. I look forward to the next conversations.

Question No. 4: Do the participants share the analysis on the absence of a unified higher executive level in the ICC and its consequence on an adequate positioning of the Office of Internal Audit and of the Independent Oversight Mechanism?

Michel Camoin: The governance oversight system should always be compliant with the principles of independence of the Office of the Prosecutor and the Presidency, and neutrality of the Registrar. In the governance oversight function, this can raise some problems, and we see that none of the past positions fully answers the question. To whom should the internal governance oversight bodies report? In the past, we had a system in which OIA was largely depending on the Registry for its budget. We, as EA, pointed out that the Registry is only one part of the executive authorities of the Court – the former system would have been OK in an Organisation with one single executive head. This was also underlined by the Independent Expert Review, which raised the question: should there be an executive Secretary-General at the Court? In EA's view, that would need changing the Statute, and probably end up in a scheme where the Court is not a real Court. We have to cope with the fact that it is very difficult to define to whom the IA reports internally. As you all know, there is a separate Major Program for the OIA. In reality, one cannot say OIA reports to anyone, which is strange for internal audit. As Saklaine reminded us this morning, the Independent Oversight Mechanism directly reports to the ASP: but we have also seen that it was probably not

understood as a real direct reporting by a majority of the members of the ASP. The ASP has no feeling of ownership of the Independent Oversight Mechanism. The same for AC and CBF. It is a problem of formal and real independence: IOM and OIA are so independent in fact that one could say to Saklaine and Florence that in the eyes of SP delegates, they don't really exist. How does the ASP know that you exist? We have seen that the Independent Expert Review suggests coming back to a solution where OIA is attached to the Registry (a solution which didn't work in the past). Do you share this analysis that one of the big challenges of the OIA, and to a certain degree of the IOM, is to have a straight reporting line to the executive bodies of ICC without infringing the independence of the Prosecutor and neutrality of the Registry?

Saklaine Hedaraly: I think that is not correct, and I am curious to hear the representatives of the SPs. You raise a point on the reporting lines, but as you said, you cannot have real independence when the line is too rigid. For the IOM, having a unified executive of the Court is a practical challenge rather than a fundamental one. Reporting to the ASP is mostly done through the Bureau, whose agenda is so heavy that there is no time for in-depth discussions. Rather than throwing the baby with the bath water, we should try a way of not in reinforcing the reporting line, but in reinforcing the interaction with the SPs.

Michel Camoin: members of ASP, what do you suggest? Maybe I am wrong in saying that IOM is not fully recognised by the ASP? We need a realistic view of where the IOM stands in your oversight function.

Annika Markovic: I do agree to a certain extent to your description: as SPs we see very little of the IOM and the internal auditor. I think there are two main challenges for the IOM. The first one is the lack of resources: if you want an impact, you should have a continuous flow of evaluations that you would then report to the ASP, and you would have to have a much closer interaction with the ASP in order to understand what topics are important for the SPs. But the interaction is not there in my opinion for you to have a clear view of the topics and be able to propose evaluations. It would work much better if you had more people working with the IOM to have a continuous flow of evaluations, and more systematic interactions with SPs. The agenda is very often too tight for the interaction or for asking questions, we need to create that space.

Michel Camoin: I guess that represents the SPs point of view. From what has been said, I think there are two ways of solving the problem: the 1st way, which seems to be indicated by Annika, would be to deepen the relationship between IOM and SPs (I guess Annika thinks either of the Bureau or of the HWG). This is something we will keep in mind. There is another possible way: change the reporting line, merging the functions of IOM with OIA, meaning that we would have only one single problem of reporting line, for that new unified unit. Is there a preference expressed there?

Florence Bole: on what you said about the absence of reporting line: as IA, we actually have an internal function to inform and work with the management of the Organisation. Yes, the absence of reporting line makes our position ambiguous: the management doesn't validate the audit plan and we do not report to them. I must add that before 2015, we were working with the three executive organs and the only specific link we had with them was that the budget of the OIA was established by the Registry. In 2015, OIA was established as an independent major program, so we did not have any longer this problem regarding budgetary matters. Functionally, reporting was operating well. Depending on the needs and personalities, there were different expectations and it was interesting to include them in the work plan.

Aiman Hija: as far as reporting lines are concerned, we have one "détaché". Usually, auditors do not report to the executive to preserve their independence, since executives are themselves subject to audits. For investigations, there is no need to go to the ASP for cases of misconduct. Even if it is part of the audit, it is about the process of management of the Organisation. But for independence reasons, it is not possible to report to an executive.

Michel Camoin: one thing is to have good relationships with the organs and with the AC for the IA, another thing is to have clear indications coming from the executive. One of the main challenges of IA is indeed to be independent, yet it must remain a tool for management. As

External Auditors, we have witnessed that the relationship between IA and AC is not normal: there has been a kind of “takeover” on IA by the AC. The appraisal of IA is done by AC, and that’s not what happens usually. AC normally ensures there is no infringement of the independence of the IA, but for all the rest, IA serves the executive, not the AC. Presently, the AC is evaluating the IA, which should be the role of the highest executive of the Court – but there are 3 executives at ICC. The problem is to define a unified expression of the executive of the Court. This explains what happened in the recent past: in the absence of a defined ICC executive, the AC took over the role of the executive in the relationship with the IA.

Silvia Fernandez: on the visibility of the IOM. When the IOM reports to the ASP, it is far from being “invisible”, I have meetings with Saklaine once or twice a week. It’s clearly not invisible. I don’t see a problem there. It is true that the ASP does not understand its functions but that is another problem. However, we need to create space to discuss these matters, which the ASP will try to do. I will try to take care of that. We need more space to improve the interaction and the pedagogy on the functions of the IOM.

Michel Camoin: so finally, Saklaine does exist! and I understand Silvia prefers to keep the IOM independent, not to merge it with OIA – *Silvia Fernandez confirms*

Margaret Shava: I heard something about a “take-over” by the AC on the functions of IA. But one of the mandates of the chairperson of the AC is to evaluate the performance of the IA, discuss its workplans. I just wanted to clarify that. In regard to that, I have a question about the process: Michel, you informed us that the conclusions of this Workshop would include the views of the conveners in case there is no consensus. Will the views of the conveners carry more weight with regard to the view of the majority? With regards to IA, as we said earlier, the previous reporting line was deemed not appropriate by the EA who proposed the current arrangement. IA reports to AC, who reports to CBF, who reports to ASP. The AC has in the past recommended that the director of internal audit have a more structured interaction with CoCo, which I suppose serves as the single overarching executive of the Court. About the role of the executive secretary in terms of reporting lines: I don’t think that there is any ambiguity. I will just recall that in 2011 the ASP decided to establish the post of executive secretary of CBF, reporting directly to the chair of the CBF. In 2019, the ASP stressed again, while approving amendments on the rules of procedure of the CBF that the executive secretary should report on substantial and technical matters directly to the chairperson. That is a statement by the ASP. In terms of administrative support to the executive secretary, this comes from the Bureau of the ASP

Michel Camoin: this is a very useful contribution from Margaret to the debate. “Take-over bid” I used on purpose a strong expression, but it was probably not the happiest expression, I should use more “shades of grey”. What I meant is that the degree to which the AC considers it has to make an evaluation of the IA, compared to what we usually see in other Organisations, is a bit excessive. You are right that it is part of the duty of the AC, and it is also the duty of other ACs - they, of course, have their word to say on the evaluation of the internal auditor. Here, what I saw is that the AC hired an external company to evaluate the IA, which we have not seen anywhere else, just as if you were scoring a staff of your own, that’s what I meant by “take-over bid”. Usually, in other institutions, the AC makes recommendations to the Secretary General about their satisfaction and their needs from the IA. This is the limit to their evaluation role, but of course, they do not evaluate the auditors themselves. I don’t blame AC for that: they just considered there was no one else here to evaluate the head of IA, which goes back to the point that there is no internal executive in charge of IA. IA is internal, so it should be placed under the executive, and protected, not condemned, by the AC.

About the question of majority opinion, this is also a good question: we are not going to vote at any moment. Either there is a consensus, or there is not and then, we report all the opinions. And in that second case, our mandate obliges us to give our own opinion, which is not a substitute for a consensus or a substitute for majority, it is only the EA’s opinion. A majority report would be meaningless in this kind of discussion. A consensus would of course be the ideal situation. But if there is no consensus, comparing all the opinions to the best practice in other Organisations seems to be the closest to a fair opinion. Now for the executive secretary of CBF/AC, you are right again Margaret, these are decisions taken by the ASP: but the ASP

is not prisoner of its own decisions, it can change them. Based on our previous experiences as External Auditors, usually in other Organisations, pure secretariat functions of specialized committees are exercised by P1/P2 (and not P4-P5) staff. It is true that these institutions, for very practical reasons (organizing meetings, minutes...), need separate means. So in the present case, you have a competition between the secretariats of ASP on one hand and CBF/AC on the other, at the wrong level compared to the practice of other Organisations. Frankly, this does not help, even if it is a bit embarrassing to raise this kind of individual questions. But in any case, this problem will have to be solved one day or the other. The decisions of the ASP taken in 2011 and 2019 were not wrong, there was indeed a need for secretariat for the ASP, the AC and the CBF, but the choice to isolate “expert” committees secretariat at such a high level can raise the problem of having a unified secretariat encompassing the ASP and its subsidiary bodies. Presently, there are two heads, that is one too much. I think I answered your four points.

James Stewart: Thank you Michel, I agree that the way questions are put can sometimes influence the answer. I was just concerned about the way question number 4 has been asked. I don't see as a problem the independence of the judiciary, the independence of OTP or the neutrality of Registrar: this is simply a fact that we work with advantageously. The Coordination Council is not a consultative committee. It is a unified high-level executive body, where you find the One-Court principle coming together. At the level of CoCo, there is a negotiation to come up with a unified position. The budget itself or features of the governance of the Court are agreed by CoCo. For example Court-wide strategic plans, KPIs, etc. When there is a crisis to manage, CoCo deals with that: Covid-19, dealing with US executive order sanctions and so on. Over time, we have learned where the One-Court principle has been crucially important. It is true that independent executive mandates are recognized within the ICC, but there is coordination across the organs to manage resources effectively. The notion of “business partnerships” is important: there are functions that need to be dealt within the OTP, but coordinated with the Registry.

Michel Camoin: Thank you James. Yes, in the past, we did recommend the presence of IA at CoCo, but then, we were finally convinced by the answer that it is a coordination body, not an executive one, and we decided on that basis to drop the recommendation.

Paivi Kaukoranta: from the angle of IOM facilitation, the operational mandate of the IOM was reviewed at the last ASP. In that connection, the reporting was not a major issue discussed, but was touched upon. In my understanding, there are no major problems. The reporting line as such is clear, but as suggested, there should be more space to discuss those reports. Silvia already said that she is eager to enhance that: at the level of the Bureau and the working groups. Aiman raised the question of misconduct and its reporting to ASP: to be honest, sometimes SPs have unrealistic expectations about information that should be given to them, IOM is aware that it cannot give too much details. On the visibility of IOM, I tend personally to think it is not “invisible” in the eyes of the SPs. Instead, the IER raised the question that visibility among the staff was more important, and that the ASP should take measures in order that the staff was not sufficiently aware of the role of the IOM.

Michel Camoin: this joins what Silvia said: improvements can be made, but in your opinion, the IOM should stay as it is.

Saklaine Hedaraly: First of all, I am grateful to the representatives of the ASP and to Paivi to recognize that I exist. There is one element on which I wish to provide clarity: the investigation mandate, by definition, is larger and less visible for the SPs than the evaluation mandate. Investigation workload is currently heavier in proportion, which explains limited visibility of the IOM. Sometimes, audit functions are in fact mixed with evaluation. In most UN Organisations, the inspector-general reports to the executive head, but coordinates with IA not to interfere. Here, since investigations of the IOM include elected officials, we cannot report to them. What Annika said is true: the resources of the IOM are so small that it is hard to have an impact, especially when so much of the work is confidential. It was discussed at the ASP a few years ago, and this year we will ask again for more resources. If you give us more visibility, we will need more resources to do the work that would come with it.

Michel Camoin: I can share this description of your relationships. I understand that your investigation is extended to the elected principals, which in your opinion makes it difficult to include you in the organs – please send a note.

Fakhri Dajani: Thank you very much for giving me the floor. From a technical point of view, there is a difference between the evaluation of IA staff members and the evaluation of the function of IA. In 2014, the Cour des comptes raised the recommendation (I will read part of it because it is a long one, and I will provide a written version later on) « ...to ensure that OIA is in line with the best professional practice, the EA recommends that OIA be accountable to the heads of organs for administrative matters, and to the AC for the appointment, dismissal, and performance appraisal of the OIA Director...». When you raised this point, it was in line with standards. Saklaine has confirmed this point. However, this is only the chair of AC appraising the head of IA. The chair of the AC does not appraise the IA office as a whole, and does not appraise the staff. According to the standard that I refer to again, every 5 years there should be an external assessment, that is why the AC hired an External Auditor to assess whether the auditors met the standards and performed accordingly to the standards. This is not a personal thing. The charter of AC was approved by the ASP and is in line with the international standards.

Michel Camoin: Thank you Fakhri. I didn't say anything different, I only said the way it was implemented, and the lack of an appraisal by the executive, were not in line with usual practices. I can confirm that it is the role of the AC to evaluate the IA function, the problem is the way you understand and apply it. It is a matter of implementation more than of Organisation.

Annika Markovic: Thank you Michel. On the possible merger of the IOM and the internal audit office, I am in favor of it. By the way, my perception is that there are not enough resources available for these two offices to conduct their work in a proper manner. I, as SP delegate, don't see resources being added very soon to the budget for these two entities. That is why it would be useful to have more flexibility in the use of these resources, which could be achieved by merging the two offices. It is the case in most other Organisations – within an office, you can have a separate function for investigations of misconduct for example. Coming to the second point of the challenge – the absence of an effective executive function of the Court – isn't it the function of the CoCo? In the CoCo, there are discussions on Covid plans, overall Court measures, including overall Court budget, strategic plan, and so on. So I think it should be possible for the IA to draft her workplan based on the risk register, because the IA work should always be risk-based, and present it to the CoCo to have the formal agreement of the three executive organs of the court, and report to it. That might be the best way to balance the relationship between the IA, the AC and the executives. Having been in ACs myself in other IOs, the role of the AC is very much to secure the independence of the IA. AC is important to discuss the audits and to have a relationship with the IA.

Michel Camoin: Annika, questions 7 and 9 will raise again this question for IOM and OIA. Saklaine brought an argument, which is that some of the duties of the IOM are relating to questions that are not internal to the Court, which might make it difficult to merge with IA. That could raise another question on having the investigations separated from evaluations. Investigations, as described by Saklaine cannot be internalised because they include the elected principals. We will keep that for later. Same for CoCo, this will be treated in question 7. James has reminded us what the CoCo exactly was, although we as External Auditors finally did not think this was the right solution. CoCo is good for the “One-Court” principle, making sure that on very basic questions the views of the organs are in line on such questions as budget, pandemic, general management, etc., but it might not be the right level for technical oversight questions. That is why, in our working document, we suggested an alternative solution which would involve the three organs but not the CoCo.

Aiman Hija: Thank you Chairman. Back to the standard matters, whether there is one or three heads for the Organisation, the IA must not report to the head but to the « board » - the ASP. We are talking of a basic principle of accounting (I refer to ISA 2012). This is a must: if you want to keep IA alive and efficient, they must report to the Board, in this case of this Court it is the ASP or one of its organs (AC or CBF, this is for the ASP to decide). On one comment: I agree with you – AC sometimes goes beyond the norm in the evaluation of the work of IA. I can assure you this happens for good reasons, when there is need for such

review, and it is just temporary additional reviews and feedbacks – we know it is not in the norm.

Michel Camoin: when we spoke about the problem of reporting, it was for the internal oversight bodies, not the entire system. The ASP is not a board of directors, in other Organisations it is the Secretariat-General. In the Court, the closest you have is the CoCo. But the CoCo seems to be a consultative body, not an executive one, and the ASP cannot replace a board otherwise you would mix the executive and the legislative. The executive has no head, and normally internal control is an important tool for the executive head to minimize the risks. And the role of the AC is to protect the internal oversight bodies against the executive head, because in some cases, things can go wrong and the IA could question what the head is doing. That is the main role of the AC. But the IA and the internal oversight bodies are nevertheless serving the executive. It is not the fault of the AC: nature doesn't like vacuum. There is no overarching executive authority, which is why AC took over some of the functions which normally should be in the hands of the executive. Otherwise I think that AC works normally and is well equipped to protect IA against the interaction of the executive, which is in a way quite easy, because there is no executive that could interfere. I think it was a useful discussion.

Francis Saudubray: Thank you Michel. Coming out of elsewhere, I have no opinion on the governing bodies of the ICC. But we have been the EA of WFP and Council of Europe for a long time, and I happen to represent my country at the committee for Programme and coordination (CPC) at the UN General Assembly. Quick benchmarking: all have their budget voted by the GA or the Board so that their independence reflects the budget and tools they are entitled to use. The AC is there to make sure independence and methodology are in accordance with international standards, definitely not a quality control entity going through the reports. Regarding the reporting line, as far as evaluation and IA are concerned, the board has communication of the programme, so that the Board or the GA (5th Commission for the UN) has its say about the programme and can suggest orientation regarding the evaluation programme. Those evaluation and IA reports are communicated to the board after the executive management had their answers to the observations, recommendations, comments issued by the oversight entities. Within these entities, there is often one single entity because they know they need to reach critical mass, have a cross-cutting vision. But of course, the third part, investigation, is separate, and these reports are never communicated to the Board. Statistics may be shared, protection of whistleblowers, etc., but nothing else. These are basically guidelines which we find in these major Organisations, and I think in my perusal way, it does make sense and usually functions quite well.

Michel Camoin: thank you Francis, you will see during your audit that there are some specificities at ICC. We would like to be able to transpose completely the solutions, but it is impossible. We can keep the idea that the role of the AC is not necessarily exactly the same in other Organisations, where the internal oversight system is a tool in the hands of the executive, but AC checks that this tool is not misused and works in full independence, no more, no less. We will modify slightly the conclusions on question 4 taking into account the different views.

(Coffee Break)

Question No. 5: Do the participants agree that a single straightforward reporting-line should be implemented in the ASP Secretariat on the follow-up of the activities of the Assembly, the CBF and the AC?

Question No. 6: Do the participants agree that a more formal structure for contacts between CBF, AC and both facilitators should be implemented?

Renan Villacis: there is only one Secretariat of the ASP but we do serve different bodies (ASP, CBF, AC and others). Before 2011, there was a director in charge of CBF and AC, then the CBF requested the Assembly to consider the creation of a P5 director post in 2011. They thought the needs of the CBF had reached that point and the ASP approved that. The Secretariat provides additional support to the members of CBF and AC, but does not interfere with the way meetings are conducted in accordance with the Assembly decision which delegated those functions to the P-5 post. Having said that, it is important to note that the

other staff members are all members of the Secretariat, as it is one Secretariat, there was an extensive discussion on the rules and procedures of the CBF in 2019. The outcomes were quite clear to everyone involved. All the major programme IV staff work under the direction of the Director, but support all the different bodies, including the CBF and the AC. It is therefore up to the director, based on the needs put forward and resources available, to allocate these resources to the different bodies, to find the right balance. Even in the pandemic, we had a centralized approach to better use resources and re-engineer the way we work.

Michel Camoin: I'm not too sure that clarifies. Maybe it is clear for other members of the Workshop, in which case it is ok for me. Again the question was about having a clear reporting line within the Secretariat. You say in your mind yes it's clear. There is supposed to be one director of the secretariat. And when I read the decision taken about the roles in the secretariat, it's not so clear. Maybe I'm wrong. Maybe the ASP members have a different opinion: do you really think the Secretariat structure is completely transparent to you?

Werner Druml: part of the answer was given by Renan. The reason why the ASP created the executive secretary and provided for a separate programme for AC and CBF was to confirm the independence of the executive secretary. The purpose was to improve the service to allow the CBF to deliver. So there are two different reporting lines: one specific on technical matters, the other one on assistance and administrative matters related to each programme, specifically to the CBF programme. I think this is appropriate, and it was confirmed by the ASP. The CBF is besides not there for rubberstamping the "haircut" communicated by the Budget Facilitator, as was mentioned this morning, but to provide the ASP with a sound, technical basis for the budget negotiations.

Michel Camoin: In your opinion, there is no problem of reporting line for the CBF. No doubt, the CBF has been set up to be independent, yet it doesn't mean it is not a subsidiary body of the ASP. There is a limit to the independence of the CBF: it has to be fully at the service of the ASP – and some members of the ASP have raised the issue of transparency of the system, which is the reason why the mandate was given to the EA. The way it works shows there might be reporting line problems, it is important not to mix theory and practice. Nevertheless, some participants do not share this view, therefore we might modify our conclusions on question 4. If there is consensus on the functioning of the ASP Secretariat, then there is no problem. Position of the ASP members: once again, are you satisfied with the present reporting lines within the ASP Secretariat?

Annika Markovic: I don't want to be the only one speaking on this question. I don't clearly see what the reporting line is now, which is why it is hard for me to say if there is a lack, a problem: because the situation is not clear to me. I don't know about my colleagues. Maybe you can take silence for an agreement.

Michel Camoin: I'm not too sure this would be a good way to answer this question. To help you in this answer: is the organisation of the Secretariat in any way responsible for the lack of effective communication between CBF, AC and the SPs? The IER suggested to get rid of the Secretariat to clarify things and leave it to the Registrar. My feeling is that there is a missing link between the CBF/AC on one side, and the ASP on the other side, because these bodies meet only once per year. One might think that the only permanent structure, the Secretariat, could be the missing link between the CBF and the ASP. If you have the feeling either that there is no missing link, or that the Secretariat brings nothing to the roles of CBF and AC, we can consider this is not a question.

Katerina Sequensova: I would tend to agree similarly to Annika, but as I am new in the position, I am not clear about the current state and what is being suggested about the implementation of a single straightforward reporting line.

Michel Camoin: the underlining idea is that "Secretariat" usually means a material organisation to prepare the meetings, the agenda, the minute: that side works normally. But one can also think of it as the permanent link between CBF, AC and SPs, and in that case, there is a proactive function that we haven't seen so far. In that respect, the HWG could have questions to ask, agenda topics to add. What role the Secretariat should play in a richer relationship between these bodies? Personally, I think that since the Secretariat is the only permanent structure, it could play an active role in the exchanges between SPs (i.e. the HWG)

and CBF/AC. If one thinks the Secretariat should do so, then it is clear that there is a need for a clear reporting line. Fakhri and Renan, sorry if I have hurt you by saying the reporting lines were not unified at the right level, but this is what we see presently. In a different system, ASP could have a service provided by the Secretariat for the whole ASP including its subsidiary bodies, which could make the permanent flow of communication between HWG and the two subsidiary committees more fluent and richer.

Renan Villacis: there are some secretariats which have a more active role. We implement decisions by SP, we don't suggest any policy changes to the SPs on our own. If our SPs wish that we play that kind of a role, we need to discuss how to do that. We are more of a technical secretariat than a proactive one.

Frances Lanitou-Williams: I just wanted to ask a clarification on question 5, which says "especially for mutual information between the ASP and the two committees, introducing a more formal structure for contacts with both Facilitators" I would like you to elaborate a little bit on that. I am not sure I have understood.

Michel Camoin: the first question [question 5] concerns the role of the Secretariat and the reporting lines, and the second one [question 6] is what could be expected from it. I understand things might have changed since our last contact with the Budget Facilitator, but in the past, it was clearly a passive relationship. The BF knew that the CBF would start working in May/June, and deliver a report in September. Then there was a very short exchange. The message from the BF would be « don't expect miracles from the budget », and then there would be no further exchanges during summer. In autumn, there was a new contact, and the BF contacted delegations to see whether a consensus could be reached on the budget proposal, including amendments suggested by the HWG. The delegations involved were participating to the HWG, not to the whole ASP. Maybe the situation has evolved since our recent audit on the budgetary process, but when we audited, there was clearly a deficit of communication between the HWG and the CBF; a discontinuity of process, and the real amendments were exclusively decided by the HWG – that is precisely where a proactive secretariat might help, if the ICC wants to keep the present system. There is a need for a permanent structure, and the only existing one is the secretariat.

Werner Druml (Webex): we are talking about two different things. On one side, support for the CBF. It is the ASP who drew the conclusion over the last ten years that the ASP needs proper support, and the proper support is the executive secretary, with a direct reporting line to the CBF through the chair. The other issue is the cooperation with the SPs and the facilitators. It is our duty and our interest to offer the support, but I wouldn't want to create too formalised procedures for that. There is also the suggestion of the IER, which proposes increasing the Workshops in the summer – we are open to that, but I think we shouldn't put ourselves into a straight-jacket. I think what is essential is the availability of the CBF for the Budget Facilitator, and we are very happy to have with Frances a very committed and interested ambassador. On the other hand, also, the availability of SPs. I have been for four years Budget Facilitator, and I know that it is not easy to mobilise SPs. But I think we are interested to have this dialogue. Our purpose is to make professional input to support the political decisions afterwards. But again, openness and flexibility are the best way. Substantial suggestions from the Budget Facilitator will be looked at by the CBF: this is an example of a cooperation that is developing. Once we finish our internal discussion, we are going to have a common meeting with the HWG. We have good experiences along those lines.

Frances Lanitou-Williams: this an opportunity for me to repeat that it is self-evident that budget facilitation is a continuous process. The Budget Facilitator must be ready to remain engaged from day 1 to the very end. Yes, there are key dates that are important, and it is important to have these calendar dates and the processes, but it is more important to make sure that communication with all stakeholders is continuous. And I mean all stakeholders. We do have a plan, a calendar of dates, but this doesn't mean that we do not remain engaged. We do facilitate contact between the stakeholders.

Michel Camoin: I understand you say it can work on a practical and pragmatic basis. Again, if this was included in our analysis, it is because during audit on the budget process, we had evidence that it didn't work as smoothly as you say. If it is not formalised, nothing guarantees

that it will last forever. Implementing procedures and giving missions to the Secretariat might be something much more subtle than a putting on a straight-jacket. Of course, we will take into consideration what you just said.

Annika Markovic: I think it is wonderful that we have a very ambitious Budget Facilitator this year and I hope that Frances will stay for the next years. It will improve the contacts between the Secretariat, the CBF and the SPs. As long as it works, it works, but it would be good to have a structure to fall back on, a basic platform for interaction that we can always as SPs count on. My second point is on the CBF: it does a very important work for us SPs, but I think that we as SPs are not paying enough attention to the content of its report. I know they have a lot of interaction with the staff of the ICC before coming with their proposal. But I don't think the recommendations of the CBF have any significant impact on the budget process and decisions. I wonder if it has enough influence, and if there are ways and means to increase this influence. The budget is based on an assumption on criminal cases that will be dealt with and of course, the CBF cannot question that, they have to take it for a fact. Then they can look at some more technical parameters, but again, this is a criminal court. We again – but I was told not to call it political - come to a discussion on how much money we want to spend on this Court, which is political, based on a number of cases you think you will deal with [James Stewart : it is technical, the preparation of the budget by the Court is not political]. I don't see the distinction in the same way, it is not technical in the way the CBF is working. Then comes our deliberation at the ASP, and that is clearly political. How could we organize it in a way that the CBF, during the process of the budget facilitation, could be present to answer technical questions of the SPs, and not just the Budget Facilitator? The CBF being present in a more continuous process would coordinate the political and the technical deliberations.

Michel Camoin: by going step by step, asking if we should have more formal structures, we don't foresee the other questions, which Annika raised and which are asked in the following question N°8. There has been a discussion between James and Annika which I think is really central to our difficulties: what the Prosecutor considers as technical from a legal point of view can't be considered as merely technical by SPs. We see that sort of debate in every system of justice. The political issue is: how much do we want to dedicate to justice? For the Prosecutor, we have a duty, we cannot choose not to look at certain crimes, and it has a certain cost. There is one element that completely escapes the CBF in the current system, between the political and the technical points of view: the translation of the budget "drivers" into a budget proposal. What are we ready to arbitrate, what to take and what to leave from the proposal derived from the "drivers" defined by the Prosecutor? We saw, as External Auditors, that in the past ten years the budget was growing independently from the number of cases treated by OTP. This is a problem that is interesting to analyse from a governance oversight point of view. That is why we suggested, when given our mandate, that this question should be examined.

At this point, provided we give further answers to the next questions on the necessity and the ways to improve the relationship between the bodies, the answer to question 5 and 6 seems to be positive. It is true that this mandate is largely centered on budgetary questions, and that oversight of the governance is not limited to this aspect. Nevertheless it is clear that the budgetary governance is the main topic, so we gave it a priority. It will be up to you to say, at the end of this Workshop, whether you want other items to be examined.

Margaret Shava: on the issues that Annika raised, two reactions: first of all, the notion that the CBF accepts without question the number of cases proposed by the Court is wrong. I am not authorized to discuss the details of close sessions, but I think they can confirm we have robust discussions. Second, thank you Annika for raising the point of the impact of CBF, by saying the issue is how can CBF be more continuously available to the ASP? As Werner has stated, flexibility is required. A prescriptive approach is not necessarily the best way. As we say about constitutions « less is more ». I think we need to give room to the realities, which are that each Budget Facilitator has its own way of working, but how do we facilitate this continuous engagement? Suggestions on how we can make ourselves available to answer questions and have a richer discussion with SPs? Regarding question 6, on the third bullet of the presentation, we have a proposed solution which involves the heads of organs approving the annual workplan of IA. I would just point out this is a function of the AC, and recall the

concerns that have been raised with regard to the independence, or the perception of independence of OIA. I would question the proposed solution.

Michel Camoin: on question 5 and 6, I understand you think a flexible solution is preferable to something clearly defined.

Margaret Shava: yes, and I think the initiative should come from the ASP, how often and in what way do they want to have that kind of interaction with the CBF?

Michel Camoin: addressing myself to the facilitators, you are at the front row in the contact with the CBF and AC. If you see that some procedures which could be clearly decided and written could help, such as the number of meetings – don't forget that this number can be increased thanks to the new means of remote communication, you are not limited in the number of meetings and participants. This allows for a more continuous communication between stakeholders. If you have some precise points, we will look at them and decide whether it would be preferable to have them described in a procedure (in that case that would involve the Secretariat), or if you want to leave them to the goodwill of the persons involved. I am against this second option, because I have never seen a bicycle going without someone pedaling. But I am open to include your suggestions in the report.

Marco Blasi: just to make a correction regarding the statement on budget growing while cases are not: unfortunately we are not looking for trouble, trouble comes knocking at our door. The CBF, as correctly pointed out by Margaret, is very active in scrutinizing what is proposed by the OTP as well as all the other organs, asking details on the situations that justify increases or decreases of the resources allocated to specific cases. The scrutiny is applied to all areas that contribute to the preparation of the budget proposal. For instance, the capital replacement plan was reviewed and more details were provided by the Court upon request by the CBF. The UNCS is another example. The ICC, like many Organisations, is linked to the UN common system: there has been an impact on the changes of the system in particular two years ago, where after about seven years there was a big jump, because the UN common system had been kept compressed for years and eventually there was an adjustment. There are many factors that play into the level of the proposed budget. But if you look also at one of the annexes that portrays the historical series of assumptions and achievements, you would see that the cases do increase, and they would increase even more if OTP did not apply a very strict case selection to a point that is getting painful.

Frances Lanitou-Williams: I don't think it is personalised. I thank all my colleagues for your vote of confidence. This is new to me, I just assumed the role of Budget Facilitator, but for me, it is certainly not a bicycle without wheels. The processes are clear, there are key dates. The Budget Facilitator just has to follow that process. For me, it's self-evident, and I do think it is well-structured and I really don't think it's personalised. This does not mean I am taking a position as to whether it can be formalised, or more specific; it is just an observation.

Michel Camoin: yes there is an agenda that was given to us, a roadmap for the Facilitator which is quite clear and transparent. From the information we had gathered in 2017, between those milestones no information was circulating. It may be different today. One example: when the CBF experts come, they come for two or three weeks and have contacts with the Registrar and all the other organs. During that period, they do not communicate with the ASP, the HWG and the Facilitators. Maybe that's not the case today but they used to work on their own, independently, although independence does not mean absence of communication. In this respect, this Organisation is very different from what we have seen in CoE, OSCE, ICAO, etc. where you have a continuous relationship between the members of the committees and the Member States. In almost all cases, the CBF are not composed of independent experts, but of member-State delegates. If you say this has been solved for ICC, then it is perfect, we don't have to bring anything new, but we haven't received such information from the HWG. We know the agenda hasn't changed and don't know what is taking place in between. So I consider you give a positive answer to questions 5 and 6, but you want to see more precisely what lies behind.

Fakhri Dajani: thank you for giving me the floor again. Annika mentioned there was no communication with the HWG. Actually, I attended all the HWG meetings on budget, and I

don't recall that I have missed one. When they need additional clarification on what is in the report, they ask me and I give them all the information possible. Again, the HWG is a political body, and for the CBF it is better to have little interventions there, because everything is reflected in its report submitted to the ASP. The other clarification I want to make is a disagreement about the interactions with the Facilitators and the SPs: excuse me for this bluntness, but I am the one who arranges meetings with some SPs, especially the Budget Facilitator, BMO, even with the VP of the ASP. Everytime, the CBF Chair is meeting with the representatives of the SPs.

Michel Camoin: we know there are formally several meetings organised. We are talking about the flow of information exchanged between CBF and the HWG during these meetings. I think we can move on to question 7.

Question n°7: Do the participants agree with the implementation of an annual meeting on internal governance oversight with high-level administrative executives of the three Organs and the head of the Internal Audit Office to approve the part of the internal auditor's annual program specifically dedicated to ICC crosscutting issues.

Michel Camoin: We had suggested in the past, as EA, that the head of IA be invited to the CoCo meetings, and we have been answered that in fact, the CoCo was not the right place to discuss technical oversight matters. Now, we have the situation where IA builds a programme on the basis of risk analysis, as all IAs do in other Organisations; the difference being that although it is discussed by the organs concerned, there is no formal decision taken approving and endorsing the IA programme, and then it is presented to AC, which formally approves it. Normally, the IA programme is approved by the executive (in most cases, by the Secretary-General). In the absence of a "father" [**Annika Markovic:** a mother!], it is approved by AC, and that does not correspond to good practices. Usually the AC has a strong word on the programme, can reject it in its protective role if it believes IA has been influenced by the executive, but it never has the responsibility to adopt/endorse it. It is as if the AC was the executive ultimate responsible for the audit programme, which has been discussed with the organs but not endorsed by them. Therefore AC gets involved in management issues. We have been told in the past that the CoCo could not endorse this decision. In the past, one might have supposed it was the role of the Registrar, but it has never been exercised in that way. That is why in the working document we suggest a solution where the heads not of the organs, but of the administration of each organ (Marco, Ivan, Hirad) have an annual meeting and take collective responsibility in approving and subscribing to the programme proposed by the IA. Then of course, AC can say no if the processes were not correctly applied and the independence of the IA was not respected. With such a proposal, we are trying to have something that represents the executive vis-à-vis the internal audit functions, and it can only be something that represents the three organs. The IA programme concerns mostly cross-cutting issues: 90% of the programme could be decided by such a "troika".

Fakhri Dajani: you have mentioned rightly that the head of organs can say no to certain audits. That's why, in order to avoid that, and according to the standards, I don't think any of the principals (subject to audits) are in a position to approve the programme. Actually, if you look at the IA work programme, there is about 20 to 30% of assignments under advisory services. The work of IA is based on risk assessment: IA meets with everybody in the Court during the risk assessment. Now AC has to make sure IA is following this path. Advisory service is like a wish list for head of organs wanting the IA to assist them with something. We don't need to reinvent the wheel. 20-30% advisory services, the rest is really based on risk assessment.

Michel Camoin: I was not talking about the 20-30% but the 70 remaining. Fakhri is right, it would make the IA programme adopted by people who are under supervision of IA. We saw in another Organisation one case where the SG himself should have been audited by its own IA, and of course in such a situation you need an AC, that is what audit committees are made for. Of course it is better when you have an overarching executive, but this is not happening here. Again, Fakhri, thank you for your remark that shows our proposed solution is not ideal either. Is it better or worse than having the AC deciding of the programme on the basis of the proposal of the IA? We could also have the IA deciding by itself of its programme, without anyone approving – but that exists nowhere. We have a triangle: leave it to IA, who loses

legitimacy; leave it to the AC, which does not correspond to the standard separation of duties, or find a third way for the executive authority(ies) to adopt the workplan, where AC can reject the IA programme if it thinks there was some pressure on IA, which is what the standard requires. That of course would necessitate written procedures so that things are completely clear between the AC and the Court.

Florence Bole: I am part of two networks of internal auditors working in IOs, the UN system and the European coordinated system. Two years ago, I conducted a benchmark to understand how the audit programme was validated because I was not satisfied with the way it was done at the Court. I believe that as IA, we serve the Organisation and its management. The plan should be validated by the management because we need to work on topics of interest for them, and also because they should be more engaged regarding our own work. If they are not available for the audit, they would remain responsible because they validated the plan. For my colleagues, it is evident that the plan is validated by the top executive management. They inform the AC once the plan is validated, or it is a parallel process. We have a rather exotic situation here and I am open to what Michel suggested. It would facilitate the engagement of the Organisation and the rollout of the audit plan. The audit is risk-based completed by my own assessment. When I did the benchmark two years ago, I asked the percentage of advisory services, and it ranged from 20 to 50%. This doesn't mean that advisory services will not be risk-based, I consider the added value of the engagement. When you work in an operative and sensitive judicial environments, a way to provide improvement on processes is to provide advice.

Michel Camoin: the solution suggested in our working document is not ideal. Does anyone have a better solution than the one that is proposed? I don't believe in the proposal suggested by the Independent Experts Review, which is hardly compatible with the Rome Statute: they assimilate de-facto the Registrar to an executive Secretary-General covering the entire organisation.

Annika Markovic: indeed, the workplan of OIA is drafted on an approach based on risks. You normally audit things like procurement, recruitment, IT, etc. These are areas where all organisations have risks of contractual problems, or problems where they need a second opinion. The IA is a service for the executive, which should approve the plan. Michel, please elaborate a little bit on the fact that CoCo is not the right place to approve the plan. If there is a good explanation to that, I think the proposal of a committee of three heads of organs is a good one. Then the AC comes in. If the IA comes to the AC and says « this is my workplan, I also had the idea of... but I was told not to do that » then AC can refuse the workplan. AC also has an important role, in my experience, in the follow-up of audit recommendations. IA is the owner of the risks and the recommendations. The AC has to see why recommendations are not implemented. In the division of duties between audits and advisory services: when there is good confidence between IA and executives, the number of advisory requests increases. That's a healthy result, and there again the AC has a role to play and must ensure that IA does not become a pure advisory body because there needs to be a control function too. I think 50% would be too much and 20-30% is a good situation. I would certainly hope that the CoCo could perform that role, but if that's not the case, please explain why.

Michel Camoin: why not the CoCo? We made a first recommendation in 2017, where CoCo was not asked to approve the internal audit programme, but only to invite the IA to attend the CoCo meetings. The common answer of the three organs was that CoCo does not discuss matters that could concern IA, as it deals only with general coordination. We could have suggested to the CoCo to become a decision-maker. But what might have happened is that the Prosecutor, the Registrar and the President would ask their deputies to represent them for questions linked with internal audit. That is why, in our suggestion, the managers would take the decisions in the name of the heads of the organs.

Aiman Hija: I am surprised by the conclusions made here. The standards are clear. The discussions of the IA are something internal, it is up to the director of IA as long as it is risk-based. I can't understand what you mean. Eventually, the ASP has the authority, AC represents the interests of the ASP. The AC cannot adopt an audit programme. The IA programme is based on risks and on resources available, which I hope will be increased in the future. Even in your recommendations here « the AC shall approve the work plan »? I

would be more than happy to provide you with other analysis of what the AC does, which is in line with international standards.

Michel Camoin: we might have a problem of wording. In the normal standard, the audit plan (risk-based, not advisory) is first discussed with the executive principals, there is a first draft, AC checks that the discussion was open, then the program is endorsed by SG. This is the only step that is missing. After that, you are perfectly right, it goes to the AC that agrees or disagrees and can ask for a new project. AC cannot be the one that both decides of the programme and looks at the follow-up of IA's recommendations.

Oswaldo Zavala Giler: as a general point, appropriate measures that could create a stronger link between the principals of the Court and the IA function are welcome. I just want to touch upon the notion of the executive and the relationship with CoCo: the executive of the Court is not an anomaly, it is *sui generis*. Not an anomaly, but a deliberate intention shown, for example, in the Rome Statute art. 112³. There is an understanding in the description of the duties of the Assembly, that the administration of the Court on which the Assembly has a managerial oversight role is shared by the Presidency, the Prosecutor and the Registrar. When it comes to appropriate solutions, I think it would be best to stick to the principals of the Court. Whether the authority of the principals is delegated is an internal matter. I think it is correct that indeed CoCo looks into many strategic issues. But this doesn't mean CoCo can't as well agree on decisions – for example budgetary assumptions. The composition of the CoCo is dictated by Regulation 3, we cannot have a delegated council in which only the directors attend: the CoCo has to reunite the heads of the organs. We could also have a dedicated CoCo to look into this. I don't see the problem of having a meeting dedicated to the IA, where the principals or those delegated by the principals endorse the plan. Overall, engagement creates ownership. Once we endorse a plan, we are also committing to a plan, and it will be easier for us to organise ourselves and make ourselves available.

Michel Camoin: I see you don't reject the idea of a dedicated CoCo. My idea was that it would be difficult to mobilise the principals on these matters and tried to be realistic. You reminded art. 112 of Rome Statute. Collective responsibility, that is why I was mentioning cross-cutting issues. If this can be institutionalized on IA, I think it would be beneficial for all. I understand you support the proposal on question 7.

Ivan Alippi: the Court has a lot of interaction with the OIA, this is an opportunity to mention it. Such interactions usually involve management and Principals, inside or outside CoCo. For example: we work intensively with the OIA on risk management and the Court's risk register was presented/approved by CoCo. When there is a new audit plan, we have the opportunity to review and discuss some aspects of it, such as the balance between audit and advisory services, the relevance and the timing of the audit. It is more a matter of formalizing this interaction process through an approval.

Saklaine Hedaraly: the IA is a management tool essentially, and the AC plays a critical role in ensuring it is used properly. It is a matter of finding the right balance. We had a similar discussion on evaluation. We have noticed that often, ASP did not propose evaluations because of a lack of knowledge. We would consult heads of organs and based on that, we would prepare the evaluation programme. I think Oswaldo's proposal is a good one, and delegation of authority would be fine. AC would ensure there is proper independence, which is crucial. The consultation on the plan matters. Who approves it is a technical matter, but there has to be a consultation in a correct manner.

Michel Camoin: this speaks in favor of integration of OIA and IOM at least for the part dedicated to evaluation. As you pointed out, in a way, you cannot expect too much of an evaluation programme coming from the ASP. The SPs are interested in the results of the evaluation, not the preparation. I am not speaking of the very specific problem of investigations. For the most useful evaluations, it's the management who knows best. That might be a way to simplify the structure and make it more effective.

³ Art. 112-2-b: The Assembly shall « Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court? administration of the Court;

Florence Bole: prior to the existence of AC, the plan was validated by the three organs during common meetings. They were always available, including for meetings that could last much more than one hour.

Michel Camoin: so unlike what I suggested, your experience shows there could be a dedicated CoCo.

Hirad Abtahi: we used to have meetings with Florence. We could have a special/*ad hoc* CoCo. When the judges drafted Regulation 3, it was to reflect the Court's governance scheme (art. 38, 42 and 43 of the Statute). As colleagues said, CoCo acts as the inter-organ forum par excellence for Court-wide agreements. When the immediate offices, ie "Cabinet", receive requests, they are transmitted to the heads of the organs for their consideration. The immediate offices then coordinate among themselves in order to prepare for CoCo or to settle the matter among the heads of organs, where urgent. The terminology is therefore not important. For example, we had ad hoc CoCos for COVID and the US Executive Order, wherein other people who normally don't sit in CoCo would come to present issues to the heads of organs' consideration.

Michel Camoin: this is a question of formalising: real documents, real minutes. Also, it is important for the AC to know the IA programme approval has been formalised, with minutes of the meetings.

Margaret Shava: I am not sure I've understood the issue clearly. Is it that the director of IA has not had access to the executives to draft her work plan? What has prevented this consultation? Is the idea that this consultation should end in a final approval of this work plan in place of AC? Or it is that the director is asking for support in the drafting of the work plan? If the idea is to supplant the role of the AC, I don't think this is in line with international standards.

Michel Camoin: Florence consults all the organs (on the risk-based part of the programme). She makes sure it is agreed to avoid major problems. But the positive involvement of the organs is not there. You have a discussion with no formal decision, and then the draft is submitted to the AC to be endorsed. We say you miss one step, which is the formal approval by the executive of the Court. It is more formal than anything else, but in that case, formalism is an essential part of accountability

Aiman Hija: since we talk about the audit process, if you want to be in line with most UN agencies, yes there is one department for audit/investigation/evaluation, but then you need create positions to handle the job. It is a very demanding and critical post. There usually is cooperation but limited to general information. On the formalisation of processes, there was a recommendation where the head of OIA observes CoCo: this is a missed opportunity. In FAO, the director of IA is an observer in management meetings and this is very helpful to everyone. If there is a chance to have this formalised, this would be great and also help the auditors.

Michel Camoin: we can restate the 2017 recommendation with a new package if everyone agrees. This suggestion was rejected last time, the argument being that it was not the role of the CoCo to deal with that. If we adopt this question 7 solution, we can try this time with the angle of more commitment to the One-Court principle? The CoCo would see the interest of a closer relationship with IA.

End of the day

25 May 2021: 9.30 am opening session

Michel Camoin: yesterday, we discussed question number 7. We discussed the way the ASP had access to the oversight system in general, and then we dedicated some time to the internal oversight system (including the IOM), which is the part that usually reports indirectly to the ASP. Today, we will discuss the part that reports directly to the ASP (that is the AC and the CBF). We had a consensus on the need to improve the flow of information on a permanent basis. There are some milestones where there are some exchanges, and there are quite long periods without exchanges. There is a need for the Secretariat to be more proactive in the exchange of information, so that this exchange is permanent between the ASP and the committees.

Question n°8: Do the participants agree

- a) to modify the rules concerning membership of CBF and AC so that the ASP can be directly represented in these committees through the facilitators, and if yes
- b) to adopt the “passive “ formula (budget facilitator vice-chair of CBF, Budget Management Oversight focal point vice-chair of AC) or
- c) to adopt the “active” formula (facilitators chairs of both committees)

In both cases b) and c) the budget facilitator would be simple member of the AC

Today, this is a new question: the idea is to modify much more in depth the relationship between the ASP and its subsidiary bodies by integrating direct representatives of SPs into both committees. This is something seen in several other Organisations. Sometimes, these committees are composed of independent experts only; in other IOs, it is a mix of representatives of the states and experts, ensuring permanent exchange of information; in other cases, they are made out of experts that represent SPs. That is the general idea: both committees becoming mixed committees instead of pure expert committees, to ensure there is a continuous direct flow of information.

Having said that, we suggest two formulas but there are other ones that can be considered. The first one would be having the Facilitators integrated in both committees, in a position of vice-chairs. The Budget Facilitator would be vice-chair of CBF, and the Budget Management Oversight focal point vice-chair of AC. The second formula would be much stronger: the facilitators would chair the two committees. There might be other solutions. The problem is that the facilitator must be felt by his/her colleagues of the ASP as being representative of all members. In the case of the Court, it might be difficult. It is not guaranteed that members of the HWG would consider that they have felt fully represented by facilitators. In that case, that would mean that exchange of information through membership should be enlarged, perhaps to two other members of the HWG.

Last but not least, as an EA, we must think of the cost of these committees. That would mean diminishing the number of independent experts, so that altogether the members of the committees wouldn't increase, or increase slightly. One could also consider that presence of members of the HWG wouldn't imply an increase of the cost of these committees, since they work in The Hague on a constant basis.

This first proposal, again, would require a major decision of the ASP about the way the membership of these bodies has been set on until now. The floor is now to anyone who asks for it.

Margaret Shava: Thank you Chair. I think for both the CBF and AC, this proposal is definitely problematic. You said it would increase transparency, but I think we addressed the issue yesterday, and we said from the point of view of both committees we do not agree there is no lack of transparency. Should the ASP require more constant communication, this can be addressed. Our other major concern regards the potential conflict of interests that would arise from blending technical and political considerations. You said yourself it could be a challenging process, even to acquaint the facilitator. Ultimately, political considerations would spill over in these committees. The proposal of political chairing what is meant to be independent committees would be problematic, the committees would be undermined by political considerations. What is evident from the outside is the four meetings/year. What participants do not know is that communication is constant throughout the year. There are focal points for various issues, there is a lot of work that goes on behind the scene. I do know that the workload of ambassadors can be heavy. I do not know how they can chair or even participate in discussions of the CBF. The other possibility with regards to political considerations: you pointed out the discussions happen at the level of the HWG, so we are blending other processes because the experts are appointed by the entire assembly, whereas the HWG is a separate and fairly restricted group in which all SPs do not participate. These technical committees should remain as technical as possible to give technical advice to the SPs. We are pointing out the risk of spill overs in the discussions. I think Werner can agree that AC and CBF do not endorse this proposal.

Michel Camoin: Thank you Margaret. Of course, we expected this reaction from both committees, and we must admit you make a good point. The problem is arbitrating between the principle of technical independence of the committees and the effectiveness of the advice given by the committees. It seems that (also in other Organisations) when committees are fully independent, while proceeding from the political, there is always a deficit of information between the work done by these committees (in particular the CBF) and Member States. We have seen other Organisations where they had the choice to merge in the committees the representation of the SPs. You are perfectly right, that blurs the image of full technical independence. In that case, there are some political issues. But if you try to go to the principle of reality, the choice is between a technical subsidiary body that does not have a full role of advice towards the ASP, or something that runs less independently but would be more effective, would almost have the last word in the budgetary decisions. Yesterday we saw that of course – and it would be your choice, Margaret – improvements can be made in the communication, but there are just qualitative improvements in the flow of information. If the ASP would decide to adopt different rules of the game, as a clear majority of other Organisations have done in the past, it works, I don't say it works perfectly, but at least it solves the problem of the full role of these committees. It is a more or less radical solution for the ASP feeling of ownership of the CBF.

Werner Druml (WebEx): I think there is not very much to add to Margaret's statement. One recommendation of the IER (n°39): « to maximize the potential of ASP sessions, SPs are suggested to defer to the CBF on technical details ». We can see the IER sees the CBF as an independent technical body that gives advice to the SPs. The budget facilitator is not necessarily the voice of the SPs. He or she does realize he/she is facing competing interests from SPs. Hence the need for technical advice. Also the last ASP in its budgetary resolution « emphasizes the central role of the report of the CBF » in those negotiations. Those negotiations are basically political negotiations on the budget. This clear separation between the political and the technical is being recognized. I can only underline what Margaret said on the importance of independent expert advice.

Michel Camoin: Thank you Werner. This position is clear and logical. This model has been working, yet the ASP, by giving us a mandate to examine the system, doesn't seem to be completely happy with it. The committees can say « we are fully transparent », but remember question 1, the mandate is seen from the States Parties delegates: is the system as transparent as it is declared by the members of the committees? It is a question of point of view. The committees are subsidiary bodies of the ASP, and in the end, it is to the ASP to determine whether the system is transparent or not to its delegations. We are not inventing a new formula, it is a general standard, a solution chosen by the large majority of other Organisations. There is also an advantage for the independence of the expert members: this would give them an opportunity to be more convincing. In the final report, they have to convince the members of the ASP. I think Werner and Margaret make a good point: nothing guarantees that the members who represent directly SPs and who are members of the committees really represent the ASP. This moves the problem of transparency from the committees to the ASP itself (that is between facilitators, members of the HWG involved on one side, other members of the ASP on the other). That is a problem met every year: when deciding on the budget, it is difficult to reach a full consensus. So the choice is between having a completely independent opinion, without having a significant influence in the final decision, or having a mixed approach where the experts keep their full independence, but discuss it right away with delegates who represent more or less faithfully the position of the ASP.

Annika Markovic: Thank you very much Michel. I am not going to remain Budget Management Oversight focal point, I have left the position and, pending approval of the Bureau, my successor William is here. I am also moving from The Hague in summer, so I won't take my own interest into account. The CBF work is very important, it is an expert body that advises SPs and gives us a reason not to delve ourselves in the technical details. We have a body doing that scrutiny for us and explaining where there are potentials for efficiencies. This is very important work but I must say it is not well known by the SPs. If you ask the SPs you might even hear that the CBF is part of the Court, of the Secretariat. I would also say the impact of the recommendations of the CBF have on budget facilitation are not as good as they could be. It has nothing to do with transparency: we know you interact

with the secretariat, we have opportunity to ask you questions you give us a written format, and I think a more seamless format would help throughout budget negotiations in the fall. But if you would include SPs to the committees, it would ensure CBF recommendations are better understood and taken into account. It is not about transparency, it is about the link between the SPs and the members of CBF, and the possibility to interact, to know the members of the CBF to a better extent. There might be other ways to set this up, but I think it is always difficult to know what change would lead to. There is always a normal reaction, the way we do it now works so why change what is working? But I don't think we should rule it out like that. My latest participation in an AC was at the OECD, just before coming here. I was there in the committee for three years, and chair of the AC for two years. This interaction of SPs in the committees and experts is not an uncommon solution: it is adopted by Organisations that respect standards and rules concerning audit, and the OECD is an example. We had four audit experts + a number of ambassadors, including the chair. That gave a very complete link to the board of the OECD, where the chair (an ambassador) would always present the results of the discussion, and there would be a report directly after each meeting to the ambassadors + an yearly report going more in detail in the work of the committee. That was very much appreciated. The challenge was not to have enough of the representation of the SPs in the AC. It was a competition to be elected to the committee, but it was never felt by the ambassadors who were on the committee that our legitimacy was in any way questioned. And it gave the AC a greater legitimacy. I think that helped when the board had to negotiate on the basis of the work of the committee. I just wanted to share this example that I have been through myself. We can think of better ways to give both committees a greater impact on the work of the SPs.

Michel Camoin: Thank you very much Annika. I think you gave the right arguments on both sides. I will add one word: Annika will soon be leaving for Vienna, and we will finish our mandate as EA, we have no interest in whatever solution you choose. As EA, we participated to both systems, at the OECD when Annika was there the Chair of the AC, and at ICAO. I won't name the other Organisations who have adopted a different system. There is a real problem with independent experts being heard in Organisations with a solution similar to the ICC. The principle of reality gives some weight to the idea of mixed committees. I think Annika was right, it is less a problem of transparency than of exchange of information on a seamless, permanent basis.

Osvaldo Zavala Giler: Thank you very much Chair. Taking advantage of the opportunity that was given yesterday to speak freely, I don't want to be perceived as proposing how things should be organized, but I wanted to share experience of the Court with committees and mostly with the CBF and the Budget Facilitator. Both are very important for the Court. The Court exchanges with the CBF on very technical issues in detail, who filters out technical information for the SPs, and provides recommendations. Having been involved in budget discussions, the role of the recommendations of the CBF shifted over time. We saw at the beginning the CBF recommendations being taken as sort of a minimum the ASP would give, and now the proposals of the CBF are more of a baseline for budget negotiations among States. The role of the Facilitator is very important for the Court as well. The Budget Facilitator acts as a neutral interlocutor, between States and the Court, but also between differences of views among SPs. That has enabled the Court over the years to have very constructive dialogues with the Budget Facilitators, to provide information to enable the Budget Facilitator to broker a negotiation. The questions that I have – I am not questioning the problem you identified, I am just thinking whether this is the most appropriate solution. For example, if the Budget Facilitator becomes a member of the CBF associated to the recommendations of the Committee, would that mean that the recommendations will no longer be negotiated anymore among SPs and become final, or do they become a new baseline for negotiation? If so, what would be the role of Budget Facilitator in brokering those negotiations be if that person is already associated with the recommendations? Taking into account SPs are not a homogenous group, whose views would be represented by the Budget Facilitator in the Committee? Will the Budget Facilitator have a technical or a political role? Furthermore, the scope of the CBF is not only budget. The CBF also looks into things like geographical representation and HR issues, legal aid, arrears... issues for which there are other facilitations. The Budget Facilitator would then become a super-facilitator or will these other facilitators also join the CBF? Also, facilitations are not, in my experience,

formal mechanisms. The ASP and the HWG have done exercises on mainstreaming and streamlining working methods, looked into how many facilitations they had and decided to reduce/increase them: the Budget Oversight Facilitation is relatively new for instance. Informal mechanisms, the moment they are made formal, there is a level of additional formality expected. Would that mean for example that those facilitations would be formal positions elected by the Assembly or the Bureau? It creates a series of questions on how this would work in practice. Especially, and I think this is the most important thing, the existence of the CBF and the technical recommendations, the existence of the Budget Facilitator, allow the Court not to be involved in States' negotiations. It creates a buffer, we don't have to be put in the center of discussions that by becoming a counterpart, can undermine the trust in the institution. We have seen how, with fantastic Budget Facilitators and great members of the CBF, they have allowed the Court to operate in a way that would increase credibility and trust in the institution. But I have also seen occasions (ASP 2011 for example) where the Court was put at the center of these negotiations. Because positions were taken on one side, and the Court was seen as a counterpart, that created an enormous amount of distrust that undermined the political capital the institution had and legitimacy of the Court. I think we understand clearly the budget negotiation is among SPs, but having those respective mechanisms has enabled the Court to not be directly involved in the discussions. With this, Mr. Chair, I really don't want to undermine the need for more communication or the ways of enhancing dialogue.

Michel Camoin: you have very strong points in your presentation of the problem. There might be a problem of coexistence of two systems: we refer to examples of mixed committees, in Organisations where there is no HWG and no facilitators. When we thought about this problem, trying to get the best out of the system, we didn't question the role of the facilitators. My colleagues who have been involved in the oversight of the Court in the past have considered that this system of facilitators, seldom seen in IOs, is a good one. You are right that by involving more the facilitators, you might lose the facilitator being seen as completely neutral. You raise a real problem. Now if I come back to our experience of mixed approaches, there were no facilitators, but my feeling is that the chairs of both committees were seen as neutral. There was no discussion of the work presented by the chair as partial, or too oriented towards the position of the country he/she represents. You are right on the principles, but I am not too sure it would be a problem in practice – of course one would have to be very cautious about that. In the case of the OECD, the chair of the AC was elected by Member States. As far as I know, facilitators are also elected. Making a difference between ASP and the HWG is true on paper but not in reality. Members of ASP formally meet once in December but there is not much behind that. The 80 members of ASP that are not in the HWG can have an opinion, but in a way, they can only be followers. It is a bit artificial to think that once the HWG has chosen a Facilitator, it would change the trust that can be given to this elected member. We didn't see that happen in Organisations who have implemented a mixed system. Nevertheless, thank you Osvaldo, this is something we keep in mind and we will present these views in the report. You will be invited to make your own position as precise as possible.

Aiman Hija: Thank you Michel. When it comes to standards of AC and best practices, it is meant to be technical experts. Definitely, having members from the ASP is a plus in strengthening the committees. For example; in the financial committee of FAO, all members are representatives of Member States. They are all elected, proposed by their governments, represent regional groups and have a technical background. Reflecting this in the AC, the issue that I would see would be to have a de facto position. If you are the facilitator, then you are the chair or vice-chair? Having a separate election for that purpose is important, based on the background of the people.

William Roelants de Stappers: Thank you President, thank you Michel. I have a general idea of the discussions of yesterday. When I arrived here, I joked that this bench was a mini-ASP, but I would also immediately add that that's absolutely not the case. I heard yesterday questions on what is the view of the members of the ASP, and I think it is important to remember that. Even mentioning regional groups – I don't believe in them, I am a universalist – I don't think all sensitivities of SPs are represented on the bench. Belgium is quite strict in these issues of independence of bodies, if there were to be future discussions to change governance rules and texts – not to prejudge my country's position. What I got from the

discussion yesterday, there was a point on the flow of information between SPs and the different bodies, and there seems to be different views on whether there was an issue, to what extent, and the possible ways to address it. I have to say in terms of the importance of the CBF and AC – I am more familiar with CBF at this stage – in line with Annika, it is an extremely important body, but I am not sure it is always known, understood or perhaps I should say valued sufficiently by delegations. Again, on the dynamics of the budget negotiations: I heard on more than one occasion that when the SPs come in, the discussions become « political »: if it is political, it is political on the basis of the technical. Some countries (the “hardliners”) don’t see what the recommendations stand for, what their point of departure is. All the capitals don’t have the same technical capacities, but some delegations do have a more micro-managerial approach, and delve into the details. That is reflected in the budget discussions. In that sense, I guess that yes, the CBF is a neutral presence in the budget negotiations, I don’t know if it could be more active. I am not sure if that would be enough to prevent SPs from reinventing the wheel, and composing a budget from scratch. We need a formula to ensure participation or at least presence of SP representatives: the two facilitators respectively would make sense. I thought of a “super-passive” formula, where the facilitators would be present in a kind of observer role – not asking them to shut up – but maybe somehow facilitating the flow of information for everybody’s benefit. The facilitator would be in a good position to pass information to the SPs. A system of election might complicate things, and I would avoid having more than one representative in the committees. A role defined like that perhaps could address the different issues we have.

Michel Camoin: William, you are a real diplomat, you suggest an in-between solution. Of course, that has to be considered. The only change we would have would be that facilitators are in permanent observer positions – a role to be defined – to preserve the purity of the independence of the committees while ensuring the flow of information. That would be only changing slightly the agenda of the facilitator, not its role. The facilitator would be the eye of SPs in the committees, but an eye that doesn’t take part. That is your position.

William Roelants de Stappers: yes, and I wasn’t specific enough: the facilitator would be neither chair nor vice-chair.

Michel Camoin: your proposal is quite attractive as it brings together the ones who think there is too much technicality and the ones who think there would be too much politics. I don’t know if it would be very effective, but in theory it solves the problem of the seamless flow of information.

Frances Lanitou-Williams: again, I am very new to The Hague and this role, so obviously I am not speaking from experience here. Allow me to repeat again how I understand the role of Budget Facilitator: for me, it is absolutely self-evident that anyone who assumes it has to have a very close, very strong relation with all stakeholders on a continuous basis. Having said that, if I am to comment on the issue at hand, I do share some of the concerns expressed in this room with regard to any changes in the role of the facilitator. If by definition, they have to ensure the flow of information, would the participation of a Budget Facilitator in the deliberations of the CBF and the AC increase or help increase the flow? I put a question mark, I am not sure. Personally, I think we can ensure the flow by all of us sharing this understanding that this is the role of the Budget Facilitator. To make sure the ASP understands where the different stakeholders are coming from. I have to say that from my own experience, there is excellent support from the ASP Secretariat (top top top!) and excellent communication with all stakeholders. These are just some preliminary thoughts, I am not sure whether the presence of the Budget Facilitator would actually help increase the flow or transparency and how it would affect neutrality, a very important quality that any Budget Facilitator has to have.

Michel Camoin: Thank you Frances. Your explanation is in line with many comments that have been made around this table. Again, I don’t want to insist too heavily: there is a danger, you are right, that SP representatives might not be felt either as representing SPs, or as being neutral. It was not the case in practice. For instance, at the OECD, the representatives were considered in their official role, the institutional position prevailed on whether they were Swedish, Austrian, etc. You are right that it raises the question of whether it would modify the perception of the Facilitator. Most probably, it would increase the influence of committees on the ASP, there is no question about that. If you consider that the principle of

purity/neutrality must prevail, that would mean the budget would still be mainly discussed through the HWG. If the ASP wants to use these committees completely, the ASP must own them. We still have the diplomatic solution presented by William of an observer role given to the Facilitator, but I am not sure it would be sufficient to increase the influence of the committee on the final decision.

Margaret Shava: I would like to comment on something you said and surprised me a little « the technical body that is the CBF has not fulfilled its role in correctly advising the ASP » [Michel Camoin: no!] – okay I got that wrong, apologies. I just would like to say something about the CBF process: before we start a session, we meet with SPs, we hear from them, and then we come back to them. There is that interaction. Pre-corona times, there is also the opportunity to hold meetings with any stakeholders who may have particular concerns. For the SPs, for the Court, the CBF or the AC have always made itself available. I wonder whether it would be an idea that during this time, getting used to technology, the HWG could invite the committees to enhance the flow of information – as opposed to the solution proposed and that is on the table. Simply because I strongly believe that just the perception, and merely the perception of some sort of selective access, limited to one SP representative, would undermine the way the committee reports are received by the ASP as a whole.

Michel Camoin: again, there hasn't been any comment on the quality of the work of the CBF. On your last point on the mixed solution: in our experience, there was no feeling of change of the nature of these committees.

Annika Markovic: I don't think we need to prolong this discussion very much longer, the different options will be presented in the report. What I am concerned about is the impact of the reports of the CBF on the budget negotiations and the budget decision, which I think is limited when you look at the final decision of the ASP. One option that we have not considered is to abolish the CBF and have a direct interaction between SPs and Secretariat on the major programmes. That is also an option that works in other Organisations. Each SP would decide of their own perception what is needed or not needed. Then it becomes very political. But there is an option.

Michel Camoin: in that case, the HWG would become the CBF. Everyone knows what we are losing: we lose the experts, and it becomes a purely political decision. It might pose a problem in the case of the Court and its three organs, but it is true it is an option chosen by other Organisations. In the CBF of the OECD, there are no experts. The question is whether you need technical expertise for the decision to be taken on sound technical grounds. I think it must be proposed: it usually has no strong effect on the technical quality of the budget. This joins our remark as EA on the budget process: this separation between political and technical analysis brings inevitably the experts to enter quite deep into micro-management issues. I remember in 2017, when we analyzed the CBF reports, there were pages dedicated to the role of two or three SGAs, details that are usually left to the managers. Experts have advantages and inconveniences.

End of the discussion on point 8, we must propose all the options. We will see if we propose them on equal footing, or if we, as EA, recommend one of them. At that stage, I have an opinion, it will very much depend on you and what you bring to the reflections.

Paivi Kaukoranta: I think there is no one and only correct formula. I do have some understanding for the concerns expressed on the role of the facilitators. The chairmanship of these facilitators in CBF and AC would necessarily have an impact on their role and the way they are perceived. I do have some attraction to the proposal made by William, which would be useful considering the need for a continuous flow of information and the importance of the CBF in the budget process. But there is no one and only correct solution.

Katerina Sequenova: I am aware that we need to wrap-up, but I wanted to say that I am sensitive to arguments on both sides. I like William's proposal, because I honestly can't really see an ambassador chairing a committee. They usually have at least two hats (UN Organisations and ICC) which is quite a lot, I can assure you of that. But I would like to see the presence of the facilitators in the meetings. Even that, I don't know how they could manage: spending two days at the ICC, my other work at the embassy is sort of falling apart, so sitting for two weeks in a meeting is almost unimaginable. Still, I think a closer connection

would be good. At the same time, the underlying concern on the flow of information being not sufficient, I understand it, I see it, we need to think of ways to improve it.

Michel Camoin: just one comment on William's proposal. « Observer » doesn't mean the observer doesn't speak, but it means it doesn't take part in the decision. He could say very much on behalf of the HWG or not, but let the committee of experts decide freely, whatever the position expressed by the observer. If we want to elaborate on that, we must have a full solution defining exactly what is the role of the observer.

[Coffee break]

Frances Lanitou-Williams: small observation, the same as yesterday. For me, we shouldn't really personalize the issue. All facilitators are committed. Annika, Päivi, William, Katerina... All stakeholders are. Everyone who assumes this role is by definition very committed to the task.

Aiman Hija: the members of the committee should remain technical completely, selected on their technical background, to remain de facto neutral. I appreciate William's proposal.

Michel Camoin: the minutes will be sent in 10 days – please send your papers. If you send notes on questions that weren't discussed here, we will annex them to the minutes.

William Roelants de Stappers: apart from written contributions, will the positions expressed will be attributed in this report?

Michel Camoin: I think it would make sense. I don't see any advantage in making it anonymous. The report will be anonymous (mentioning only the name of the organs and functions represented), but the minutes shouldn't be. The only case that could be met is a participant who doesn't want to be identified: tell us and we will see how to deal with it. If you don't want to be recognized, then we should consider it hasn't been said.

Question n°9: Do the participants agree to modify the internal ICC regulation in order to merge the internal audit and the independent oversight mechanism?

Michel Camoin: This is an issue we already have hinted when presenting the internal oversight system, that is the IOM and the OIA. As has already been said yesterday, one could find reasons to keep the system as it is, that is an IOM reporting to the ASP and the OIA reporting to the executive (in whatever form, including a « special CoCo »...). I think Saklaine has brought some arguments to keep that clear separation. The most common model in the UN system and in the coordinated organisations is that IA and evaluation are merged⁴. In many cases, investigations are run by an inspector general that is part of this system. In the case of the Court, there are some arguments on reporting lines, on the nature of the job. On the other side, there is a problem of critical size: the Court is not a very large structure. You have four oversight entities whereas in most other situations, there are only three (AC + CBF + integrated audit evaluation structure) or two (AC + integrated audit and evaluation function). Our final report will probably give figures on the cost and difficulties it raises. In the present Organisation, the IOM is so tiny that whenever there is a problem, there is a technical difficulty with the rules that makes it impossible to transfer any appropriation from one major programme to the other. In the present situation, IOM is a major programme, and OIA is also one (a little larger but not so big). May I remind you that the solution recently used, due to this structure, was to lend someone from the Registrar to the IOM, which really is not a clean solution.

Saklaine Hedaraly: I understand by the last point about the critical size and want to clarify that we encountered difficulties about the resources of the IOM that have been partially addressed. The 2022 budget request will be larger. We are talking about things that are no longer applicable here. On the critical size issues, both OIA and IOM are so limited and stretched that I don't see how merging would create any savings. There might be some benefits in combining the two, but it wouldn't solve a situation where there is so much overlap. IOM and OIA represent 1% of the total budget of the Court. I want to correct

⁴ Referring to the previous sample of 29 Organizations, ICC is the only one which has a separate IOM/OIA system.

something you said: in most organisations, including in your summary, the IA and investigation functions are usually combined in the office of the inspector-general. The evaluation function in some UN Organisations is joint (UN Secretariat for OIOS, UNESCO for example). In many other Organisations, the evaluation function is the one that is separate. In fact, there is no single office where these functions are combined: the solution you propose would be novel (which doesn't mean it is not a workable idea). Looking at the substance of the issue, there would be a problem with the model of IA discussed (working closer with the executives of the Court), as IOM is required to investigate allegations against the executives themselves. We can all agree that would not be workable. In fact, I would even say that we would deal with something very novel where the evaluation and audit functions are merged together/ investigation separated. I guess this is the novelty in the UN system we would have to discuss. In many IOs, where the evaluation is separated, it is not by accident: they feel that the substance of performance audits and evaluations is similar, and the line is extremely fine (including also performance audits by the EA, which also raises the concern of this being discussed by an EA who exclude themselves of the potential implications, but that was discussed yesterday and we can leave it like that). In some Organisations, the evaluation body reports directly to the governing bodies. In the Court, it is not an accident either. We can question the wisdom, but if you look back at the article 112.4 of the Rome Statute "the ASP may establish a subsidiary body, such as an IOM, which will conduct inspections, evaluations and investigations"). I don't think it would be that easy to remove IOM and move it to OIA, which is not a subsidiary body of the ASP. Some of the functions are the same, but the IOM has a higher degree of independence by virtue of this reporting directly to the ASP. I think that for the SPs, there is a benefit of the direct access to the IOM, as for the case of the Trust Fund for Victims which was a big issue when I arrived (raised by the CBF). To summarize, I don't think it is possible unless you completely overhaul the system and create an IOM that includes the audit function to have something integrated. But then you would have the problem of IA that should report to the executive. If we are talking just about the evaluation function, that could work, but I think a large work would be needed to ensure that it complies with the current regulatory instruments, and for the SPs to decide if they want to relinquish part of the independence of the function.

Michel Camoin: I don't really believe you can say that reporting to the ASP directly, or reporting to the executive means necessarily there is a difference of independence, because the AC would be competent for these functions. You have another formal argument which is art. 112.4: the ASP "may" have a direct IOM, but it also may not. I don't think there is a real obstacle, since the ASP is not obliged by the Rome Statute. I am not too sure the question of the financial cost of the system is so neutral. In the present situation, you are right, both budgets are not significant, but that doesn't mean the streamlining could not be profitable. We have seen quite a number of organisations where these functions were all integrated, including investigation, and it worked, no one complained about the independence – of course under scrutiny of the AC.

Aiman Hija: going to the Rome Declaration. In most UN agencies, the word « inspection function » includes audit and investigation. I suggest the OIA to join the IOM, as a lot of audit work covers investigation functions?

Paivi Kaukoranta: As Facilitator, I would not feel comfortable to take any strong position. No « no or yes » answer as I am supposed to remain neutral. But I would rather point out a couple of issues: of course, I see the resources problem, I am concerned that they are still limited. But I would recall that yesterday, Saklaine mentioned that the IOM is also authorized to investigate misconduct of elected officials. I would also recall that a number of recommendations of the IER may have an impact on the mandate of IOM, if implemented. For example R 108: IOM would establish Ad hoc Investigative Panels for complaints against elected officials; R109, in the longer term, forming of a judicial council for these complaints; R124: the ASP should consider enabling the IOM to provide support to EBCO that would be established; R125: IOM would retain its functions of inspection, evaluation and investigation and would act as permanent secretariat for bodies in EBCO. There are some additional tasks that may be coming. I will have the first facilitator meeting this week, I don't have any idea of how SPs view these recommendations. This idea of combining of functions is not hinted by the IER report itself.

Michel Camoin: we will have to take into account the IER, but in my mind, there was no contradiction: these functions could either be separated or integrated, the mere difference is the practical way it works, I mean the effectiveness of the reporting line, and the cost. What you gain in principle with the higher reporting line is not what you gain in reality. The independence is something more concrete in real life. The experts, without coming to that conclusion, bring arguments to merge: if you want to increase the volume, it is better to have an integrated solution. Remember the size of this institution is presently €150 M, no more. I will bring figures and benchmarking in our report; the ratio in terms of staffing and cost is probably not favourable for the Court⁵. We will have Ivan find the figures. It is true that currently, the cost is not that big when limited to IOM and OIA, but it increases when you consider the whole system, in particular CBF and its executive secretariat. If you want to increase the functions of IOM and OIA, as proposed by the IER, I think it is a good reason to merge.

Annika Markovic: I don't think the ICC is such an enormous Organisation that it makes sense to have two different units doing evaluations or performance audits. Both offices have limited resources, and more budget is needed, but this is going to be hard to get an agreement

⁵ The financial data for ICC in 2019 (before the pandemic) concerning the cost of the governance oversight system are the following:

Governance Oversight Body	Real cost (€ 2019)
AC travel cost	37.380,16
CBF travel cost	160.421,95
Programme 4500 (Committee on Budget and Finance) – Hospitality	5.808,45
Programme 4500 (Committee on Budget and Finance)- Printing	1.200,00
Programme 4500 (Committee on Budget and Finance)- Staff costs	377.323,55
Programme 4500 (Committee on Budget and Finance)- Training	3.289,00
Programme 4500 (Committee on Budget and Finance)- Translation and Interpretation	94.081,02
Programme 4500 (Committee on Budget and Finance)- Travel	16.611,69
Sub-total Programme 4500 (Committee on Budget and Finance)	498.313,71
Independent Oversight Mechanism	521.599,52
Independent Oversight Mechanism Staff costs	497.300,00
Independent Oversight Mechanism travel costs	12.600,00
Independent Oversight Mechanism contractual services costs	1.100,00
Independent Oversight Mechanism training costs	3.800,00
Independent Oversight Mechanism consultants costs	6.300,00
Independent Oversight Mechanism furniture and equipment costs	600,00
Office of Internal Audit	686.280,88
Office of Internal Audit staff costs	648.500,00
Office of Internal Audit travel costs	10.100,00
Office of Internal Audit training costs	7.600,00
External audit	70.000,00
Grand Total	1.973.996,22

So the governance oversight system represents 1,3% of ICC expenses. This is an extremely high ratio: on similar basis, it is only 0,004% in the Council of Europe, 0,005% in the OSCE, etc. EA will bring more comparisons to illustrate this specificity of ICC.

on during the budget facilitation. The SPs don't have an appetite to increase the budget of the Court, generally speaking. That means we would have to agree where to boost these offices, but also where to cut. But of course, we have an amazing facilitator, wonders are possible this year. But I think a merger would create more flexibility. This is not for me a savings exercise: both offices are stretched, merging would give flexibility and allow to better deliver. I think the evaluation on the TFV you did, Saklaine, is a good example, it took 11 months to have an evaluation done because of staffing shortage. I also, with this link to the ASP, my understanding from the precedent ASP president was that it was hard to get new ideas for evaluation for SPs, they were not really forthcoming. I don't really see that that link is going to be a big problem, and it can be substituted by the AC. I would be in favor of merging.

Francis Saudubray: a short benchmarking, before a comment about the cost. Notwithstanding the cost of the four entities of current system, this bureaucratic complexity generates transaction costs. You have to hold meetings, transfer information, coordinate... this cost is very difficult to measure, but it is part of the assessment process. As an auditor, we always keep in mind the tax-payers money. At the Council of Europe, the integrated office of evaluation, investigation and audit collaborates closely with the ethics office that has just been created. They do investigations on behalf of the office, and on the other hand they investigate elected officials of the ECHR.

Michel Camoin: I think there is a problem of objectivity of the comparison. We will make some effort to clarify the comparisons. Such models do exist. The problem is not a problem of changing standards, but thinking about what this institution needs. Of course, if we come up with a unique solution, we would have to argue. The real criteria are not about standards, but about cost and effectiveness of the system.

Fakhri Dajani: indeed, there are different systems in place. I also take into consideration Saklaine's concerns, which are good ones. From a practical point of view: we have the head of IA at the level D1, the head of IOM at level P5. By proposing a merger, which would serve certain purposes and objectives, we are also faced with difficulties, practical problems – I believe there are some. Putting on the table all the pros and cons.

Michel Camoin: yes, there may be staffing issues that might be raised, but I think it shouldn't be an obstacle: if the reform is good, it's just a matter of implementation in time. You make a decision for the future, and we must find a way to avoid brutality and to smooth personnel issues: some elements can be postponed to make them more acceptable. A recommendation should be SMART – Specific, Measurable, Acceptable, Realistic, and Timely. The timing of the merger could be set to one or two years. However, this is a good point; the Secretariat issue might raise the same one.

Ivan Alippi: I wanted to offer an idea in terms of streamlining some audit activities, while looking into the current resources available. As Annika rightly said, increasing the current budget is challenging. Looking at the two small budgets (IOM and OIA), perhaps there is little that can be achieved by merging them. At the same time, on the EA's current budget envelope can accommodate both the financial audit and performance audits. The latter was introduced after the conclusion of the construction of the building. Initially, the auditors had two teams, one of financial audits (ICC and TFV) and one focusing on the ICC permanent premises construction project. When the project was completed, the second audit team was discontinued. In the meantime, some other issues had emerged (for example: liquidity issues and the appropriate level of the ICC cash reserves), and the auditors proposed to look into them through a performance audit, whose costs were covered by the unused resources resulting from the discontinuation of the audit team for the premises project. From then, the EA have been carrying out performance audits every single year, one per year or up two. Now, this approach has been handed over now to the Korean Auditors, who are taking over from the French Cour des comptes. There is an opportunity to streamline these activities by transferring resources from the EA budget envelope, which is included in the budget of the Court (MP V, SASP) to the OIA. I am thinking about the money invested in oversight activities, such as audits. We have different oversight bodies (EA, OIA, CBF, AC and IOM) currently formulating recommendations (about 500 when including the IER's), all very useful, some more than others, and we need to focus on which areas should be looked at or,

simply, be focused on implementing all the pending recommendations, which is going to be a lot of work for all of us.

Florence Bole: a lot has been said, and I am not going to comment on reporting lines but as Ivan has said, we have actually different sources or origins for performance reviews – let's call them reviews. I perform audits, the EA also. Saklaine does evaluations. We might have within the Court people doing other engagements at the request of the management. Within a small Organisation, it creates a lot of confusion. There is an issue of coordination; there is an issue of topics, there are not so many we can cover as we cannot cover the judicial. A lot of people operate in the same environment, we always end up auditing in the same fields and the clients are actually getting upset with this. Ivan who is a quantitative person looks at the number of recommendations he has to implement. On our side, the issue is to conduct these engagements in an environment already overwhelmed. Regarding evaluations in particular, there is no difference between a performance audit and an evaluation. Many of my colleagues from different Organisations merge staff from different units, try to leverage on the skills they have in order to cover their activities as much as possible. We have to coordinate to know what the other ones will do, which does have a cost as Francis said. Before doing an audit, we must make sure the other one will not do audit the same area at the same moment. Beyond issues of reporting lines, there are basic operational issues. Independence is not a question of reporting to a higher level, but it is a mindset that has to be understood by counterparts.

Saklaine Hedaraly: reiterating my concern, which is even more of a concern hearing EA speak about bureaucratic costs. We just heard of the cost of the EA and its performance audits, and I think it is very odd to have the EA make recommendations on that when they themselves are part of the bureaucratic cost. As expressed by the AC representative yesterday, the bureaucratic cost should include the cost the EA also brings in those performance audits. That should also be looked at if the idea is to create efficiency and less of a bureaucratic oversight.

Michel Camoin: thank you Saklaine for being that frank. Of course, if we mention the cost of the oversight system, for clarity we will include the cost EA⁶. The only thing is to know for all parts of the system, including the EA, the cost is justified. The only thing I can say in that respect is that there is no doubt on the problem of having to dedicate resources to financial audits, which is compulsory and can be done by a certain type of auditor only, the EA; but you have a valid point on all the rest. We must include everything in the cost to be representative. This report will be presented to the ASP that will decide at the end of the day if they have their money's worth. At the end of day, that's all this is about.

Aiman Hija: Saklaine, the EA is charging nothing. If you did it by an external audit firm, the amount would be over a million dollars, so thanks to the French Cour des comptes for their audits and for their proposal to follow us basically during the past years. We know you are paying the staff costs yourself. When it comes to cost for the audits in the ICC, for OIA and IOM, it is about 1% of the budget – that is basically in line with other Organisations or even more. Asking to SPs to increase the budget is difficult at this stage. From an AC point of view, since the Rome Declaration uses the word « inspection » the correct way is legally covered. AC should revise its charter. We know our role exactly, and these issues will be resolved. Thank you again for all the good work.

Michel Camoin: we come to the end of this Workshop, thank you for participating. A question number 10 has not been discussed. It is about a suggestion made by the IER, they suggested a very different system increasing the role of the Registry. They went in a different direction, which we can call the « Secretary General model ». I didn't investigate that: it seems clear to me that this path is not open by the Rome Statute. I mentioned it only in case some of you think it is a workable solution. Recommendations 369 and 370: if you refer to the report you would see the Registry would have an overarching executive capacity on layers 2 and 3 (the administration of justice and the international Organisation). This would be under full executive responsibility of the Registrar, I think. 42.2 of the Rome Statute does not allow that.

⁶ In 2019 the annual cost of EA is 70k€, the annual cost of IOM is 521,6 k€.

Oswaldo Zavala Giler: thank you for this opportunity to contribute to the discussion. On the last point you made, the response of the Court to this IER recommendation will be sent for reference. It would be very valuable if the findings of this exercise could address the points of the IER as well, for all stakeholders to have clarity.

Michel Camoin: we will keep in touch exchanging the minutes. We are available if anyone wants further contacts, and we can have a small meeting to wrap discussions if needed. Let's keep this completely open at that stage. In terms of calendar: in 10 days, minutes + documents communicated by the participants will be dispatched for clearance by the participants. Then we will make a report that should also be available in draft for clearance beginning/mid-July. We don't need to rush the clearance process because we can deliver after summer, the ASP would discuss it in December. The Koreans will begin their interim missions in September, we must have left by that time. Thank you again, we keep in touch.

End of the session.

ANNEX 4: FIRST LETTER FROM THE CBF

COMMITTEE ON BUDGET AND FINANCE

Reference: ASP/CBF/2021/019 Secretariat –Secrétariat
The Hague, 23 May 2021

Mr. Michel Camoin
Director of ICC's External audit
Cour des comptes
13, rue Cambon – 75100 PARIS Cedex 01
France

Dear Mr. Camoin,

I am referring to your revised working document “NOTE FOR THE WORKSHOP ON THE ICC GOVERNANCE OVERSIGHT” (“the Note”) received on 18 May 2021.

A) Background

On 7 December 2019, and at its eighteenth session, the Assembly of States Parties requested: “*the External Auditor to conduct an evaluation of the oversight bodies of the Court as part of its work in 2020, replacing the performance audit, and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole; ...*”⁷.

The Committee on Budget and Finance (“the CBF”) examined your Note with great interest, and I will reflect on the questions that are directly related to its mandate.

B) Answers to questions directly related to the mandate of the Committee on Budget and

Finance:

Question 3: Do the participants agree with the description of the present relationships between the ASP and the ICC governance oversight mechanism and their lack of transparency towards the States Parties?

Adequacy and transparency vis-à-vis States Parties

The cooperation between the CBF and States Parties on the one hand and the role and activities of the Executive Secretary on the other hand prove that the current system in place is working effectively and transparently.

Role of the Executive Secretary:

In order to provide more strategic advice to the Assembly, in 2011⁸, the post of the “Executive Secretary to the Committee on Budget and Finance” was established to provide the CBF with technical and administrative assistance reporting directly to the Chair of the CBF.

In 2019⁹, the Assembly has approved the amendments of the Rules of Procedures of the CBF, where the Assembly stressed, once again, that the Executive Secretary reports on substantial and technical matters directly to the Chair of the CBF. The aforementioned Assembly Resolution defines, therefore, clearly the reporting lines. There is a clear separation between the duties of the Secretariat of the Assembly and those of the Executive Secretary and his staff for the technical subsidiary bodies of the Assembly, a set-up which is working well. In order to maintain the best working conditions of the technical subsidiary bodies that independence from the Secretariat is very important. In addition, for seamless and coherent

⁷ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighteenth session, The Hague, 2-7 December 2019* (ICC-ASP/18/20), vol. I, Part III, ICC-ASP/18/Res.1, section I., para. 6.

⁸ *Official Records of the Assembly ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part B.2, para. 122

⁹ ICC-ASP/18/Res.1.

operation, the technical subsidiary bodies need to have sufficient resources in order to deliver what was mandated by the Assembly.

Cooperation: CBF – States Parties/Budget Facilitator

The CBF and the Budget Facilitator have had over number of years a cooperative and effective relationship. The CBF receives the Budget Facilitator in its sessions to discuss openly the issues and concerns some States Parties have for the CBF to consider in its sessions. As a good practice of communication and transparency, at the first day of its autumn session, the CBF members meet with The Hague Working Group at the seat of the German Embassy to discuss the concerns of States in relation to the proposed budget that is submitted by the Court. A briefing session by the Chair of the CBF takes place after the completion of the autumn session in order to share with States Parties the outcome of the session. Few weeks after the briefing session a report is issued and shared with States Parties. During the Assembly, the Chair of the CBF addresses the Assembly on the outcome of the two sessions of the CBF. During the year, communication may take place between the Budget Facilitator and the Chair of the CBF on different issues in particular those related to the budget process.

Question No. 5: Do the participants agree that a single straightforward reporting-line should be implemented in the ASP Secretariat on the follow-up of the activities of the Assembly, the CBF and the AC?

As explained in the response to Question 3 above, the creation of the post of the Executive Secretary allowed for the exclusive servicing of the CBF by having one person in charge of all Committee related matters. This led to an increase of the overall servicing capacity and quality. In 2014, Programme 4500 “Committee on Budget and Finance” was created under Major Programme IV with a view to increasing budgetary transparency and to directly allocate the resources needed for the fulfilment of the Committee’s work. While the Executive Secretary assists the Secretariat of the Assembly on a broad array of financial, budgetary and administrative matters in relation to Major Programme IV, Programme 4500 is clearly distinct from the Programmes of the Secretariat of the Assembly.

Few staff are assigned to service the technical committees, i.e. the CBF and the Audit Committee. Such allocation and separation in providing the services to the technical bodies are working well. The independence of the Executive Secretary was reaffirmed by the Assembly. Maintaining two distinct reporting lines is essential for the CBF to provide the appropriate technical advice to the Assembly. It is not unusual to have two reporting lines; one on substantive matters, and a second on administrative matters. Different examples can be found in other international organizations and comparative examples do exist within the Court.

Question No. 6: Do the participants agree that a more formal structure for contacts between CBF, AC and both facilitators should be implemented?

As indicated above in question No. 3, the CBF and the Budget Facilitator have had over a number of years a cooperative and effective relationship.

Transparency between the States Parties and the CBF is assured. The CBF would be open for more contacts if they were felt necessary.

Question n°8: Do the participants agree to modify the rules concerning membership of CBF and AC so that the ASP can be directly represented in these committees through the facilitators.

The Budget Facilitator and the Budget Management Oversight (“the BMO”) focal point are representatives of States Parties. The purpose of the CBF and the Audit Committee as subsidiary bodies of the Assembly is to provide independent technical advice on budgetary and administrative matters. Their recommendations serve as technical input for the political discussions and decisions by States Parties. The independent character – the members of the Committees are bound to act in their personal capacity – of the experts’ analysis and recommendations have always been recognized as being of particular value to the Assembly.

The political role that the Budget Facilitator and the BMO focal point being part of the Committees would endanger the technical role that the CBF and the AC have to fulfil. The

Committees would lose their character as independent expert bodies. Also, the facilitators lose their flexibility necessary during the budget negotiations at the Assembly because they would have to defend their position that has been reached in the CBF and in the AC. There also would be different criteria for membership, where the CBF and AC members are elected by the Assembly as independent experts while facilitators are diplomatic representatives of States Parties being nominated by the Bureau.

Finally, considering the workload of the Chair/Vice-Chair of the Committees going well beyond the two meetings (of one and two weeks), the suggested roles of the Budget Facilitator and the BMO focal point do also not seem very practical.

The current set-up should be maintained and the independence of technical advice for the political

consideration of the Assembly be assured.

The Note rightly points out in its terms of reference that objectives of the mission are i.e. the assessment of the performance of the current mechanism and to examine to what extent it meets the needs of the States Parties. A judgement about adequacy requires, thus, an understanding of the efficiency and effectiveness of the current set-up. Therefore, we are looking forward to receiving the outcome of this assessment together with the results of the related examinations that were not reflected in the Note of the External Auditor.

I would like to request that this letter be annexed to your final report that will be submitted to the Assembly.

Please accept, Mr. Camoin, the assurances of my highest consideration,

Yours sincerely,

Werner Druml

Chairperson

Committee on Budget and Finance

Assembly of States Parties

ICC: Judge Silvia Fernandez de Gurmendi, President, Assembly of States Parties

ANNEX 5: FIRST LETTER FROM THE AC

ASSEMBLY OF STATES PARTIES AUDIT COMMITTEE

International Criminal Court Monday-Tuesday, 24-25 May 2021

Reflection of the Audit Committee on the Note by the External Auditor

Your Excellencies,

Distinguished representatives of the States Parties,

Distinguished representatives of the International Criminal Court,

Dear colleagues,

It is a great pleasure for both (Mr. Hija and I) to be here today to address you on behalf of the Audit Committee and reflect on the paper prepared by the External Auditor on the evaluation that the Assembly of States Parties tasked him in 2019 to carry out. This is an excellent forum for dialogue with all the parties concerned on this matter.

I will begin my presentation by providing a brief insight into the history of the establishment and reestablishment

of the Audit Committee and its mandate.

ESTABLISHMENT AND RE-ESTABLISHMENT OF THE AUDIT COMMITTEE

In 2014, the External Auditor recommended to terminate the then-existing Audit Committee as it was not functioning as intended. This was due to its composition: of its five members, three were the ICC principles and the remaining two were externals.

Therefore, the External Auditor recommended *to establish a new Audit Committee in line with best professional practices, assisting the Assembly of State Parties in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, and the internal and external audit process.*"

Consequently, the Assembly, at its fourteenth session in 2015, approved the re-establishment of the Audit

Committee¹⁰.

Based on the guidelines by the Institute of Internal Audit (IIA), the Charter of the Audit Committee defines its mandate as "to assist the Court in meeting States Parties' demands for transparency and accountability by providing oversight of management practices in key governance areas, such as:

- a) Values and ethics;
- b) Governance structure;
- c) Risk management;
- d) Internal control framework;
- e) Internal audit activity;
- f) External assurance providers, including¹¹:

1. The examination and monitoring of the independence of the External Auditor and of his recommendations as well as of any other questions raised by the External Auditor or by any other external assurance provider; and

2. Making recommendations to the competent organ concerning the nomination of the External Auditor."

¹⁰ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourteenth session, The Hague, 18-26 November 2015* (ICC-ASP/14/20), vol. II, part B.3, Annex IV.

¹¹ AC-Charter, para. 5.

I. The Assembly's Resolution (ICC-ASP/18/Res.1) dated 7 December 2019

At its eighteenth session, the Assembly of States Parties requested:

“the External Auditor to conduct an evaluation of the oversight bodies of the Court as part of its work in 2020, replacing the performance audit, and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole;”¹².

The Audit Committee examined with great interest the Paper prepared by the External Auditor (*la Cour des comptes*). The Committee has reflected in depth on the analysis therein, mainly in relation to the audit functions, as will be explained later in this document.

Initially, the Committee would like to ask a few questions that could be discussed and possibly answered during the workshop, before reflecting on those questions related to the mandate of the Audit Committee that were raised by the External Auditor:

1. Which identified problems does the paper propose to rectify and improve in the area of reporting and transparency?
2. What benefit will the States Parties and the Court derive from a change to the current procedures?
3. What is the cost involved in making such changes?
4. Are there any anticipated efficiencies that will be achieved after adopting the proposed changes?
5. Is the independence of the Court's Organs fully respected?
6. Is the independence of the Audit Committee fully respected?
7. Is the independence of the Committee on Budget and Finance fully respected?
8. Is this exercise in line with the findings and recommendations of the Independent Experts?

II. Questions raised by the External Auditor in his Note

The External Auditor initially raised seven points but then later updated this to a list of ten questions.

The Audit Committee will reflect on those questions as they relate to the audit function.

Question No. 1: Do the participants agree with the understanding of the objective of the mandate?

The mission of the External Auditor as mentioned in the paper has a threefold objective:

I. To assess the performance of the current mechanism supervising the governance of the ICC in terms of adequacy and transparency vis-à-vis the ASP, the supreme organ of governance of the Court and, if need be, to flag its insufficiencies from this point of view, in particular with reference to those good practices established in other international institutions;

II. To examine to what extent this mechanism meets the needs of the States Parties, in particular in terms of controlling the coherence between the missions/ programmes of the Court and the budgetary means that the States Parties allocate to it; and

III. If need be, to propose to the Assembly alternative scenarios and measures to strengthen the effectiveness of its governance oversight of the Court, while taking into consideration the specific constraints associated with the principles of independence and neutrality of the ICC Organs, as set out by the Rome Statute.

The Audit Committee agrees with these elements and would add to them “achieving efficiencies”.

¹² ICC-ASP/18/Res.1, section I., para. 6

Question No. 2: Do the participants agree with the description of the present ICC governance oversight mechanism and of its stakeholders?

In 2014, the External Auditor recommended, in its audit report of the 2013 financial statements, the reestablishment of an Audit Committee that reports directly to the Assembly or through the CBF.

The Audit Committee is a technical, subsidiary body of the Assembly. Based on the current set-up, the Chair of the AC meets with the Chair of the CBF at least once a year to discuss mutual issues of concern, and maintain cooperation between those two technical bodies. Moreover, in order to avoid duplication of work, two of the five members of the Audit Committee are appointed from among the active members of the CBF; and both Committees are supported by the same Executive Secretary. This current set-up has proved to be working well.

The Note provides statistical information on a sample of 29 international organizations, where it indicates that the CBF and the Audit Committee of the ICC are in the group in which the majority of the international organisations are placed, which indicates that the ICC is conforming to best practice. Curiously, however, the Note elaborates on other organisations outside the majority group instead of concentrating on the majority 25 Organisations with an internal set-up to the ICC.

Question No. 3: Do the participants agree with the description of the present relationships between the ASP and the ICC governance oversight mechanism and their lacking of transparency towards the States

Parties?

It is unclear to the Audit Committee how the External Auditor reached the conclusion that there is a lack of transparency between the Assembly and the ICC governance oversight mechanism. We recall that the Chair of the Audit Committee addressed the Assembly in 2019 in person. Due to COVID-19 restrictions, it was not possible to do so in 2020, and thus a statement of the Chair was sent to the Assembly instead.

Since 2019, the reports of the Audit Committee are submitted directly to the Assembly. This differs from the initial practice of submitting them as attachments to the reports of the CBF.

This demonstrates the Audit Committee's openness towards States Parties in presenting information and being available for discussion and clarifications.

Secondly, the focal point of the Budget Management Oversight (BMO), Ambassador Markovic of Sweden, addressed the Audit Committee during its eleventh and thirteenth sessions in 2020 and 2021 respectively and discussed freely and openly all the matters of concern to States Parties.

And thirdly, a few weeks after the conclusion of its sessions, a report is shared with States Parties and with the Court, summarizing the outcome of the Audit Committee's technical oversight discussions and its recommendations.

All this demonstrates the audit Committee's openness towards States Parties in presenting information and being available for discussion. It is evident that transparency exists and is maintained between the Audit Committee and States Parties.

Question No. 4: Do the participants share the analysis on the absence of a unified higher executive level in the ICC and its consequence on an adequate positioning of the Office of Internal Audit and of the Independent Oversight Mechanism?

The Paper noted that "*there is no single Court overarching executive body.*" However, it did not mention whether having such a unified higher executive body would be beneficial or not; what would the role of this executive body be, its make-up; and if it is more than one person, what is the additional cost.

As is known to all of us, the ICC is a unique Organisation being a Court, where the judicial part is necessarily independent from the administrative part, and likewise for the prosecutorial arm. This is why there are three different organs headed by three different Principals, that have managed to work together and fulfil their mandates.

As for the Director of the Office of Internal Audit, this position reports to the Audit Committee on substantive matters and to the Registrar on administrative matters. The Audit Committee recommended that such set-up be maintained in order to avoid any conflict of interest should the Director of the Internal Audit Office report instead to any of the three Principals, as the Principals themselves fall within the scope of the internal audit.

The Audit Committee has in the past recommended that the Director of the Office of Internal Audit attend the

Coordinating Council (CoCo) meetings. This recommendation has not been implemented; however, the Court has stated that it will involve the Director on issues of relevance.

Question No 5.: Do the participants agree that a single straightforward reporting-line should be implemented in the ASP Secretariat on the follow-up of the activities of the Assembly, the CBF and the AC?

In order to maintain the best outcome of the technical subsidiary bodies:

- They must be able to maintain their independence from any interference from the political body; and
- The technical subsidiary bodies need to have at all times sufficient and appropriate financial and human resources in order to deliver what was mandated by the Assembly.

In practice, some staff of the Secretariat of the Assembly are assigned to, and working closely with the CBF and with the Audit Committee. Other staff of the Secretariat are assigned to and working with the Assembly and its Presidency, with the Bureau and with its Working Groups.

The OIA reports to the Audit Committee and not to the Secretariat of the Assembly. Such set-up is in accordance with the international standards. Not only is this entirely in accordance with international standards, but is moreover entirely in keeping with the Rules approved by the Assembly.

Moreover, the outgoing External Auditors themselves when auditing the financial statements of the Court for the year ending 2013 raised the following recommendations:

“The External Auditor recommends terminating the existing Audit Committee and establishing a new committee in line with best professional practice, assisting the Assembly of State Parties (ASP) in fulfilling its oversight responsibilities for the financial reporting process, the system of internal control, and the internal and external

audit process. This committee must therefore be established as a subsidiary body of the ASP. It could be set up as a sub-committee of the Committee on Budget and Finance (CBF). To ensure that the Office of Internal Audit is in line with best professional practice, the External Auditor recommends that OIA be accountable to the heads of organs for administrative matters and to the Audit Committee for the appointment, dismissal and performance

appraisal of the OIA Director. The Committee shall approve the Internal Audit Charter and the Internal Audit Office’s annual audit plan and review the effectiveness of the internal audit activities. To reflect this independence in the Court’s budget, the Office of Internal Audit’s budget should be taken out of Major Programme III (Registry), and established as a separate Major Programme to be executed under the sole responsibility, authority and accountability of the OIA Director”.

The current set-up was initially proposed by the External Auditor in 2014 and subsequently approved by the Assembly. Therefore, the External Auditor has revised his previous opinion. The reasons for this change have however not been made evident in the Note.

Question No. 6: Do the participants agree that a more formal structure for contacts between CBF, AC and both facilitators should be implemented?

Integration of direct representatives of the States Parties into the CBF and the Audit Committee:

The Note did not provide the pros and cons for this proposal. The added value and the impact on the different processes, both for the Court, and on the two Committees, of having the Budget Facilitator and the Budget Management Oversight focal point chairing and/or co-chairing those Committees, is not clearly stated.

It is obvious that the Note did not distinguish between the political role that the BMO focal point will play if s/he is part of the Audit Committee, and the technical role that is the mandate of the Audit Committee, and the potential conflict of interest that such a set up will create. Even the appointment and the election processes are different (the focal points are appointed by the Bureau while the members of the Committees are elected by the Assembly as a whole). The Note failed to perceive that the Committee will entirely change its character from that of an independent and objective expert providing purely technical advice to the Assembly to assist in informed decision making; to a hybrid committee of political considerations and technical expertise. This introduces risk in its functioning and outcome, as well as endangering the confidentiality of the deliberations of the Audit

Committee. The Note did not address the impracticability of blending the workload of the Chair/Vice-Chair of the Audit Committee, independent and off-site experts, with the heavy ambassadorial duties of the BMO focal point.

Question No. 7: Comments on the implementation of an annual meeting on internal governance oversight with high-level administrative executives of the three Organs and the head of the Internal Audit Office to

approve the part of the internal auditor's annual program specifically dedicated to ICC crosscutting issues

As is well known, the Director of the Office of the Internal Audit conducts yearly meetings with the Court Officials when conducting a risk assessment exercise, and based on this exercise a work plan is drafted to cover the high risk areas taking into consideration the available resources to execute such plan. In addition, the Director will discuss with the Court Officials any additional requests to include them in the work plan for the provision of advisory services. Thereafter the work plan is submitted to the Audit Committee for its approval. In summary, what is proposed by the External Auditor in his Note is actually in place and have been exercised. As was mentioned earlier, the Audit Committee recommended in the past the Director of the Office of Internal Audit to attend the CoCo meetings. This recommendation was not implemented; however, the Court answered that it will involve the Director on issues of relevance.

Question No. 9: to modify the internal ICC regulation in order to merge the internal audit and the independent oversight mechanism

Merging of the internal audit and the independent oversight mechanism:

Currently, the IOM reports to the President of the Assembly, and the OIA reports to the Audit Committee. The Rome Statute covered the three functions of the IOM (Investigation, Inspection and Evaluation) under one umbrella and did not cover internal audit. Merging the function of the internal audit with the other three functions may call for an amendment to the rules of the Rome Statute, and raises a different proposition for the reporting line of the OIA.

Under the point of merging the Internal Audit and the IOM, the paper did not elaborate on why there is a need to merge these two bodies and what would be the pros and cons in doing so, and whether there will be a cost efficiencies or not. In addition, another way of reorganizing the internal audit function is by outsourcing it, which was not covered by the External Auditor's Note.

From a technical point of view, merging those four functions together is possible, as an identifiable good practice in place at the United Nations where the Office of Internal Oversight Services covers the four functions.

However, a thorough study should be conducted as the size and mandate of the Court differs from that of the OIOS. In addition, if the decision were to be made to merge them, it would

need a new organisational structure for this new office; currently the Director of the OIA is at D-1 level while the Head of the IOM is at P-5 level.

The Note did not suggest any practical solution for this conundrum.

The External Auditor's note envisages the main mission of the Audit Committee as to protect the independence of the Internal Audit and to oversee the coordination of the external auditor. This differs sharply from the vision of the States Parties, which has stood the test of time. The Audit Committee's main role as clearly stated in its Charter, is to assist the Court management and the Assembly in their oversight functions in the areas of governance, risk management, and ethics; and to monitor the internal audit function and approve its programme of work, the charter under which it functions, its annual plan; and to assess the performance of its function. This includes the protection of its independence. In addition, the Audit Committee oversees the work of the external auditor.

III. Conclusion

To conclude I would like to underline that since its re-establishment, the Audit Committee has acted as a catalyst in triggering important improvements in many fields, such as through an enhanced risk management framework. The Audit Committee further established a more structured follow-up on recommendations, which contributed to reducing risks and identifying risk mitigating measure. Thus, the Audit Committee has not only added an additional layer of accountability but also given an incentive to all actors to work more closely together to achieve tangible progress in many areas of its mandate.

The Audit Committee remains optimistic that in relation to areas of our mandate where the Court is still lagging behind, such as those in relation to the governance structure and to the values and ethics framework, substantial improvements will soon materialize.

While the Audit Committee acknowledges that such change needs time and takes dedicated resources and close inter-organ consultation, the Audit Committee would wish to see greater engagement from the Court's management to make these areas a true priority so as to bring about real change. In the view of the Audit Committee, improvements in this field would not only be of added value for the Court but also foster the trust of States Parties in the institution. At this juncture in time, this seems to be more critical than ever.

The Audit Committee is looking forward to receiving the outcome of the assessment of the performance of the current mechanism, and the result of the related examination.

Thanking you for your attention, the Audit Committee requests that this statement be annexed to the final report of the External Auditor that will be submitted to the Assembly.

* * *

CC: Judge Silvia Fernandez de Gurmendi, President, Assembly of States Parties

ANNEX 6: SECOND LETTER FROM THE CBF

COMMITTEE ON BUDGET AND FINANCE

International Criminal Court Monday-Tuesday, August 12th, 2021

Dear Mr. Camoin,

I am grateful for sending the Draft Report on ICC Governance Oversight and giving participants in the workshop the possibility to comment.

For the Committee on Budget and Finance (CBF/Committee) I would like to point out the following:

My letter of 23 May 2021 concerning the reflections of the Committee on the ten questions raised in your Note summarizes the CBF position on most of the elements in the present Draft Report.

The mandate of the Assembly of States Parties (Assembly/ASP) was "to conduct an evaluation of the oversight bodies of the Court and to recommend possible actions on their respective mandates and reporting lines, while fully respecting the independence of the Court as a whole." The "access of States Parties (SP) delegates to the ICC governance oversight system" as being pointed out in your Draft Report is therefore not the "basic question raised through the mandate given by the ASP to the External Auditor". An evaluation of the oversight bodies has at the same time not being made.

The CBF does not "negotiate" the budget proposal with the International Criminal Court's (Court/ICC) internal Budget Working Group, nor does the Budget Facilitator "pre-negotiate between the ICC's internal Budget Working Group and the different categories of States Parties the draft budget". The CBF gives after an independent thorough consideration of the Proposed Program Budget expert advice to States Parties for a political consideration of the budget and its adoption. According to a recommendation of the IER "States Parties are suggested to defer to the CBF on technical budgetary details¹³".

The CBF is willing to engage with States Parties and the Court on all issues related to the budget process¹⁴. Various recommendations by the IER refer to this and will be dealt with by the CBF in the context of the Review Mechanism with an open mind.

As to your Recommendations relevant for the CBF:

1. Recommendation No. 1 is **not** consensual. The independence of the subsidiary bodies is an essential ingredient for justifying the ASP's trust in its impartial expert advice.

2. Recommendation No. 3: In principle, the CBF agrees that a reform should not lead to increased expenditure. However, our experience confirms that any change or reform had a bill attached to it.

3. Recommendation No. 4: This recommendation goes counter the essence of the budgetary process and the "central role that the report of the Committee on Budget and Finance has on budget discussions", as being expressed in various resolutions of the ASP.

Furthermore the mandate of the CBF is not only to provide technical advice on the budget proposal, but is also responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly.

The Audit Committee (AC) has a different and distinct function and mandate from the CBF, where the AC focusses on key areas as *Values and Ethics, Governance structures, Risk management, Internal control, and Audit activities both internal and external*, while the CBF has the expertise to fulfil the advisory competence on the *budget, finance and administrative matters*. Both functions are required in any organisation including the ICC. The States Parties

¹³ IER recommendation No. 139.

¹⁴ *Ibid.*, No. 138

under the direction of the Facilitator/Coordinator on the other hand require the independent expert advice for their internal political discussions.

The function of the CBF is not to “represent” the States Parties budgetary positions but to give independent expert advice. The characterization of the very time consuming, intensive technical work by elected members as “sterile redundancy” may not be shared by States Parties keen on professional and independent advice.

The existence and functional independence of the Executive Secretary may not have been foreseen in “ICC’s core texts” but was created by the tenth session of the ASP “to assist the Committee in its work to provide more strategic recommendations to the Assembly”. The Executive Secretary “will report directly to the Committee through its chairperson and will be part of the Secretariat of the Assembly administratively”. This functional independence and the active support to both subsidiary bodies have proven over the years as being very important for their work.

A CBF composed of States Parties delegates may well be the largely dominant formula among classical international organisations. In light of the special character of the Court, its complex set-up, its mandate and States Parties’ expectations, however, an independent committee has been created by the ASP at its first session as an “appropriate mechanism” for the budgetary and financial review and monitoring of the resources of the Court.

I would like that this letter be annexed to your final report that will be submitted to the Assembly.

Please accept, Mr. Camoin, the assurances of my highest consideration,

Yours sincerely,

Chairperson

Committee on Budget and Finance

Assembly of States Parties

CC. Judge Silvia Fernandez de Gurmendi, President, Assembly of States Parties

Ambassador Kateřina Sequensová, Vice-President, Assembly of States Parties

ANNEX 7: SECOND LETTER FROM THE AC

ASSEMBLY OF STATES PARTIES AUDIT COMMITTEE

International Criminal Court Monday-Tuesday, August 12th, 2021

Dear Mr. Camoin,

I am referring to the External Auditor's Draft report on ICC Governance Oversight ("the Report") that was sent on 28 July 2021, where you have asked those who participated in the workshop to comment on the Report by 13 August 2021.

The Audit Committee ("AC") reviewed the Report and would like to point out my reflection on your Note that contained ten questions, which was sent to you after the workshop that took place between 24 and 25 May 2021 summarizes the AC's position on most of the elements in the present Report. Below is the response of the AC on the five recommendations in the Report:

Recommendation No. 1. (Priority 2) The External Auditor recommends the ASP to give through its Bureau a permanent access to the Audit Committee to a limited number of delegates as observers. The role of these delegates would be to serve as "focal points" to provide information to their colleagues of other delegations on the current activity of the independent Audit Committee.

The AC strongly disagrees with this recommendation and believes that it will impair the independence of the AC and its function. Whenever a State Party requires more clarification and information on the work and outcome of the AC other than what has been provided through its reports and through having the Budget Management Oversight focal point ("BMO") addressing it during the sessions, the AC is committed to engage with the BMO and discussing such required clarification and information on the work and outcome of the AC.

Furthermore, the AC is committed to engage with States Parties and the Court on any issue of concern. Various recommendations by the IER will be dealt with by the AC in the context of the Review Mechanism with an open mind.

Recommendation No. 2. (Priority 1) The External Auditor recommends to the Coordination Council (CoCo) to formally endorse, under the ex-post control of the AC, the annual internal audit program. The AC could ask for amendments, which would need in their turn to be approved and endorsed by the CoCo. The OIA should report directly to the CoCo, and the CoCo, with the advice of the AC, should be fully responsible for the evaluation of the Head of OIA.

The AC strongly disagrees with this recommendation as it leads to a conflict of interest situation having the auditor reports to the auditee (the Heads of Organs).

In 2014, your Office (Cour des comptes) in its report on the 2013 Financial Statements of the ICC recommended: "[...]To ensure that the Office of Internal Audit is **in line with the audit standards and best practices**, the External Auditor recommends that OIA be accountable to the heads of organs for administrative matters and to the Audit Committee for the appointment, dismissal and performance appraisal of the OIA Director. The Committee shall approve the Internal Audit Charter and the Internal Audit Office's annual audit plan and review the effectiveness of the internal audit activities.[...]" **It is unclear to the AC why you have changed your Office's recommendation that were in line with the Auditing Standards and best practices?**

The AC emphasizes that monitoring and reviewing of the work of the OIA is part of its mandate, as provided in its Charter. The Report did not provide any issue with the current set-up and did not justify the proposed recommendation.

The AC reiterates that the best professional practice is for the AC to approve the Internal Audit plan and for the Internal Audit function to report to the AC. While, dual reporting lines are common, reporting lines to Senior Management are generally limited to administrative matters only.

Recommendation No. 3. (Priority 1) Given the ICC's persistent liquidity shortage, and the high level of ICC's governance oversight cost ratio compared to other International Organisations, the External Auditor recommends that no reform of the ICC Organisation as a whole, and of the governance oversight organs in particular, should lead to increased expenditure, unless equivalent decrease(s) are found and decided in other domains, and a priority should be given to reforms that can provide measurable economies.

The AC is of the view that the ultimate objective in any reform is not to increase the expenditures. However, in practice changes or reforms had a bill attached to it. In addition, the implementation of recommendation No. 4 would not enhance the efficiency or effectiveness of the oversight structure of the ICC and would result in a negative "value for money".

Recommendation No 4. (Priority 1). The External Auditor recommends:

- to suppress the CBF composed of independent experts and its Executive Secretariat and to transfer partially its advisory competence to the AC, while its role in the preparation/negotiation of the budget proposal with ICC's internal Budget Working Group would be fully transferred to THWG or a sub-group;

- to submit each year, before summer, the initial budget proposal simultaneously, both to the AC, who would be invited to issue a synthetic technical opinion on the initial budget proposal (as for any other financial proposal submitted to ASP), and to THWG, who could immediately start to prepare and negotiate, in direct contact with ICC's Budget Working Group, the ASP's final consensual decision on budget to be taken in December.

The AC strongly disagrees with the recommendations on establishment of a "hybrid" AC and strongly believes that both the AC and the Committee on Budget and Finance ("CBF") with the support of their Executive Secretary should continue without any modification to their set-up and to their independent functions.

The AC recalls that members of both the CBF and the AC are independent experts who provide their expertise on a pro bono basis. Building upon the Rome Statute articles 112.2.(b) and (d) and 112.4, the CBF was established in 2002 by the Assembly of the States Parties ("ASP") pursuant Resolution ICC-ASP/1/Res.4. The Terms of Reference annexed to the above-mentioned Resolution, approved by the ASP, provide that the CBF is responsible of the "technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties." While the Registrar is responsible for the budget proposal on behalf of the Court and the ASP of its approval, the CBF does not intervene in the process, rather, it provides (non-binding) recommendation to the ASP.

The role of the AC is, however, different from that of the CBF. The AC has specific responsibilities focusing on areas mainly relating to internal controls, risk management, values and ethics, and internal and external audit matters, while the CBF's mandate is on issues that have budgetary, financial and administrative matters. In order to fulfil the mandate of both Committees with strategic approach, the Assembly approved the establishment of the Executive Secretary function, which has proven to be very effective and efficient for the work of both Committees.

Recommendation No. 5 (Priority 1). The External Auditor recommends to merge OIA and IOM in one Major Programme.

In order to provide a well-informed response to this recommendation, the AC would like to receive further details on this proposal from the practical side and in relation to whether amendments are required to the Rome Statute and to the respective rules.

I would appreciate that this letter be annexed to your final report that will be submitted to the Assembly.

Please accept, Mr. Camoin, the assurances of my highest consideration,

Yours sincerely,

Chairperson

Audit Committee

Assembly of States Parties

CC. Judge Silvia Fernandez de Gurmendi, President, Assembly of States Parties

Ambassador Kateřina Sequeñová, Vice-President, Assembly of States Parties

ANNEX 8: NOTE FROM THE HEAD OF IOM

Date: 02 September 2021

Dear Mr Camoin,

Let me first thank you for extending the deadline to respond to the *Draft Report on ICC Governance Oversight* to 3 September 2021, as the initial deadline of 13 August 2021 was difficult for us to meet, while ensuring we could include relevant data relied upon, in the middle of summer holidays. I trust you will receive these comments on behalf of the Independent Oversight Mechanism (“IOM”) in the spirit in which they are provided, to ensure that the Assembly of States Parties (“ASP”) has as much information as possible to assess your recommendations with respect to the International Criminal Court’s (the “Court”) oversight system.

General Comments

At the outset, the IOM notes that, as highlighted by the Chair of the Audit Committee during the 24-25 May 2021 workshop, it is problematic that a review of the Court’s oversight system be performed by one of the very bodies of this system. This issue is exacerbated when the review calls for a significant overhaul of all the bodies constituting this oversight system, with the exception of the very body conducting the review. Indeed, the report calls for the “suppression” of the Committee on Budget and Finance (“CBF”), a drastic change of scope in the terms of reference of the Audit Committee (“AC”), and the merger of the IOM and Office of Internal Audit (“OIA”), despite their distinct reporting lines and sources of existence. Nevertheless, no change in role or scope of the External Audit function is recommended.

The IOM is also concerned that the External Auditors continue to refer, in paragraph 16 of the draft report, to the CBF and AC as being two subsidiary bodies of the ASP, and to the IOM and OIA as “internal services” of the Court, despite it being pointed out clearly at the workshop that the first sentence of the IOM’s Operational Mandate, an ASP resolution, defines the IOM as a subsidiary body of the ASP¹⁵. Defining the IOM and OIA as two “internal services” makes it easier to recommend their merger, but the fact that they are not similarly established is an important issue to consider in assessing this recommendation, as will be discussed further below.

Finally, while Table 1 of the report accurately depicts the relative costs of the respective oversight bodies, it may be misleading to compare the figures with other international organizations, where the figures often include only the internal audit and investigation functions, and not the costs the evaluation function, or other committees (such as finance committees, etc.). Kindly refer to the data provided below for a more accurate picture.

Specific Recommendations

The IOM will comment here only on Recommendation No. 5, merging the IOM and OIA in one Major Programme.

Resources for Evaluation, Audit, and Investigation

The IOM agrees with the External Auditor that in most United Nations (UN) Organizations, Funds, and Programmes, some of these three functions are merged. However, in most of these organizations, the evaluation function is distinct from the internal oversight function, which comprises only internal audit and investigation. To the IOM’s knowledge, the only UN bodies where all three functions (evaluation, audit, and investigation) are merged are 1) the Office of Internal Oversight Services (OIOS) of the UN Secretariat; 2) UNESCO¹⁶; 3)

¹⁵ ICC-ASP/19/Res.6, Annex II, para. 1 (“The Independent Oversight Mechanism (hereinafter ‘IOM’) is a subsidiary body of the Assembly of States Parties to the Rome Statute...”).

¹⁶ United Nations Educational, Scientific and Cultural Organization, headquartered in Paris.

WIPO¹⁷; 4) IMO¹⁸; 5) WMO¹⁹; 6) UNRWA²⁰; and 7) UNIDO²¹. Most other organizations' (including, amongst others, UNICEF²², UNHCR²³, WFP²⁴, FAO²⁵, UNFPA²⁶, and UNOPS²⁷) internal oversight department do not cover all three functions.

Moreover, it is incorrect to say that in those UN bodies where all three functions are merged, the internal oversight service can investigate the Head of the Organization, as they typically report to this head.

It is also misleading to suggest that the high oversight cost of the Court's system is based on duplication or possible savings by merging the IOM and the OIA. Publicly available information suggests that the cost of the three internal oversight functions is on par with the 2017 levels of the organizations with the three merged functions listed above:

Organization	Relative Cost of Evaluation, Audit, and Investigation (Dec. 2017)
OIOS	1.1%
UNESCO	0,47%
WIPO	0,59%
IMO	0,94%
WMO	0,91%
UNRWA	0,27%
UNIDO	0,82%

It is also important to note that inquiries with colleagues in UNESCO and WIPO have shown that their 2020/2021 oversight budget has increased to 0,90% (up to 1.1% if programmatic contributions are included), and to 0,70% respectively.

By comparison, the Court's budget for evaluation, audit, and investigation, calculated based on the 2020 programme budget of the IOM and the OIA is **0,75%** (using the figures in the External Auditor's report).

Organization	IOM and OIA (2020 Budget)
ICC	0,75%

If anything, these figures show that the resources attributed to the IOM and the OIA are less than those attributed to other organizations, with the exception of UNRWA, whose scale of operation, reflected by its more than 30,000 staff, is very different from the context of the Court. It may also be useful to note that the Independent Expert Review noted that both "[t]he IOM and the OIA should be given enhanced authority and resources to be able to better carry out their functions."²⁸

Regulatory Framework and Reporting Lines

In light of the above, it is possible to theoretically have these three functions (evaluation, audit and investigation) in one major programme. However, it is important to note that the IOM, as a subsidiary body of the ASP, currently reports to the ASP President and presents its reports to the Bureau of the ASP, whereas the OIA reports to the AC. The newly revised

¹⁷ World Intellectual Property Organization, headquartered in Geneva.

¹⁸ International Maritime Organization, headquartered in London.

¹⁹ World Meteorological Organization, headquartered in Geneva.

²⁰ United Nations Relief and Works Agency for Palestine Refugees in the Near East, headquartered in Amman.

²¹ United Nations Industrial Development Organization, headquartered in Geneva.

²² United Nations International Children's Emergency Fund, headquartered in New York.

²³ United Nations High Commissioner for Refugees, headquartered in Geneva.

²⁴ World Food Programme, headquartered in Rome.

²⁵ Food and Agriculture Organization of the United Nations, headquartered in Rome.

²⁶ United Nations Fund for Population Activities, headquartered in New York.

²⁷ United Nations Office for Project Services, headquartered in Copenhagen

²⁸ IER Report, Recommendation no. 364.

IOM Operational Mandate has further clarified the role of the ASP and the Bureau, especially with respect to the selection of evaluation topics.

In addition, the External Auditor recommends that the OIA reports to Coordination Council (CoCo) (as opposed to the IER recommendation that it be within the Registry), but this would mean that different functions within the proposed new merged OIA/OIM programme may have to report in different places, which is unworkable in practice.

Concluding Remarks

The decision to possibly merge the IOM and the OIA in one major programme would obviously not be for the IOM to make, but for the ASP. Such a new programme is possible, and some UN organizations do indeed cover these functions in one department. However, in the IOM's view, the benefits of such a merger would not be one of savings in the Court's budget, but one of having the three functions (internal audit, evaluation, and investigation) be better coordinated. Such improved coordination, however, would come at a cost of the individual functions having to alter their current reporting lines, which could give rise to additional problems, for instance in the case of investigations of elected officials.

Since the discussion of the Independent Expert Review recommendations includes a review of the future role and mandate of the IOM, we would suggest that any analysis of the recommended merger be addressed in the context of that discussion, to ensure that all the elements are fully in the sight of the ASP before making a decision.

Let me end by thanking you for allowing us to comment on the draft report. I would be grateful if, to the extent these comments are not reflected in the final report, they may be appended to it in their entirety.

Saklaine Hedaraly

Head, Independent Oversight Mechanism

Copy: President Silvia Fernandez de Gurmendi

President of the Assembly of States Parties

to the Rome Statue of the International Criminal Court

ANNEX 9: ICC's OVERSIGHT ORGANS

Oversight Organ/Function	Creation Date	Date/nature/n° of basic document	Number and type of members/participants	Description of the Mission	Reporting line
Bureau	Not identified specifically. The Bureau has probably been operating since the creation of the Court.	Article 112-3-a of the Rome Statute and Rule 29 of the Rules of Procedure of the Assembly of States Parties.	A President, two Vice-Presidents and 18 members elected by the Assembly for three-year terms- Delegates	The Bureau shall assist the Assembly in the discharge of its responsibilities. (Rule 29)	Reports to the Assembly
THWG	December 2004	Resolution ICC-ASP/3/Res.8 (2004), Terms of reference adopted in February 2006	Delegates	The Working Groups shall assist the Bureau in those matters referred to them	Report to the Bureau (or its President)
NYWG					
Budget Facilitator	Not identified. The website of the ASP identifies reports for the Budget Workgroup since 2003		1 delegate		Reports to the Bureau (or its President)
Budget Management Oversight focal point	February 2017	Decision of the Bureau of the ASP February 16, 2017.	1 delegate	Organisation of Budget Management Oversight and Strategic Planning process	Reports to the Bureau
CBF	September 2002	ICC-ASP/1/Res.4 Establishment of the Committee on Budget and Finance Reference made to article 112, paragraphs 2 (b) and (d) and 4, of the Rome Statute. However the article does not mention the CBF as such.	12 members with geographical representation. Independent Experts	The Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties.	Reports to the Assembly

Audit Committee	2014 – Operational since 2016	Report of the CBF endorsed by the ASP in 2014 - ICC-ASP/13/15), vol. II, part B.2	5 members. Independent Experts	The mandate of the Audit Committee is defined in its Charter. The Audit Committee should address the following topics: governance, ethics, internal controls, risk management, internal and external audit matters.	Reports to the Assembly through the CBF (I have not found any clear information about the reporting lines). The Committee was established following a recommendation of the CBF and I believe the AC sends its reports to the CBF.

ASP Secretariat	September 2003	<p>ASP Rule 37 and other relevant provisions of its Rules of Procedure, in which specific functions regarding servicing of the Assembly and subsidiary bodies established by the Assembly are assigned to, or contemplated for, the secretariat.</p> <p>Establishment of the Permanent Secretariat of the Assembly of States Parties to the International Criminal Court (ICC-ASP/2/Res.3)</p>	ICC Staff : 10 established posts	<p>Rule 37 -rules of Procedures of the Assembly of States Parties</p> <p>Duties of the Secretariat: The Secretariat shall receive, translate, reproduce and distribute documents, reports and decisions of the Assembly, the Bureau and any subsidiary bodies that may be established by the Assembly; interpret speeches made at the meetings; prepare, print and circulate, if so decided by the Assembly or the Bureau, the records of the session; have the custody and proper preservation of the documents in the archives of the Assembly; distribute all documents of the Assembly and the Bureau; and, generally, perform all other work which the Assembly or the Bureau may require.</p> <p>"The functions of the Secretariat shall be to provide the Assembly and its Bureau, the Credentials Committee, the Committee on Budget and Finance, the Special Working Group on the Crime of Aggression, as well as, upon explicit decision by the Assembly, any subsidiary body that may be established by the Assembly, with independent substantive servicing as well as administrative and technical assistance in the discharge of their responsibilities under the Rome Statute, where applicable by means of pooling with resources available with the Court" cf Para 4 p 387</p>	Reports directly to the Assembly and administratively to the Registry
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<p>1/ CBF Secretariat</p> <p>2/AC Executive Secretariat These Secretariats do not exist. Only the position of CBF/AC Secretary has been validated</p>	<p>1/CBF Secretary December 2011</p> <p>2/Audit Committee Secretary: November 2015</p>	<p>1/ICC-ASP/10/20 (: At its tenth session, the Assembly approved the post of the Executive Secretary to the Committee on Budget and Finance</p> <p>2/ ICC-ASP/14/20 (November 2015): At its fourteenth session, the Assembly approved the Charter of the Audit Committee as contained in Annex IV of the Report of the Committee on Budget and Finance on the work of its twenty-fifth session.</p>	<p>ICC Staff that belong to the ASP Secretariat. Number of staff involved unknown for the functioning of the CBF and the AC.</p>	<p>1/Assist the Committee in its work to provide more strategic recommendations to the Assembly (more detailed tasks in CBF Manual I-C-7)</p> <p>2/"Secretarial services shall be provided to the Committee by the Executive Secretary of the CBF." - Charter of the Audit Committee</p>	<p>1/The Secretary of the CBF reports directly to the Committee through its Chairperson, and will be part of the Secretariat of the Assembly administratively (Cf CBF Manual I-C-6)</p> <p>2/Reporting lines not defined in the AC Charter</p>
<p>OIA</p>	<p>Operational in 2004</p>	<p>Financial rule 110.1 (a) Financial Rules and Regulations adopted in September 2002</p>	<p>ICC Staff - 4 established posts</p>	<p>The Office of Internal Audit assists the Court in achieving its strategic and operational objectives by rigorously reviewing systems and operations across all areas of the Court. These reviews (audits) are aimed at identifying how well potential threats and opportunities (risks) are managed, including whether the most effective structures, policies and processes are in place, and whether agreed procedures are being adhered to.</p>	<p>Reports administratively to the Registrar and functionally to the Audit Committee</p>
<p>IOM</p>	<p>November 2009</p>	<p>Statute of Rome Art 112.4 ICC-ASP/8/Res.1 Establishment of an independent oversight mechanism</p>	<p>ICC Staff - 4 established posts</p>	<p>The mandate of the independent oversight mechanism includes the functions of inspection, evaluation and investigation.</p>	<p>Reports to the Assembly through the Bureau</p>