

INTERNATIONAL CRIMINAL COURT

Twentieth Session of the Assembly of States Parties

World Forum, The Hague – Thursday, December 9, 2021

Presentation of the Reports of the External Auditor

Madam President,

Distinguished Ambassadors,

Distinguished Delegates,

Ladies and Gentlemen,

It is my pleasure today to present to you the reports prepared by your External Auditor for the year 2021, the last year of our mandate which began in 2012, pursuant to Article 12 of the Financial Rules and Regulations of the International Criminal Court.

Kindly allow me to convey to you the sincerest regrets of Mr Pierre Moscovici, First President of the French Court of Auditors (la Cour des comptes) and External Auditor of the International Criminal Court, who, due to compelling obligations, cannot make this presentation himself.

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The first issue I would like to address concerns the difficulties our audit teams met with as a result of the Covid-19 pandemic. Originally scheduled for 7 to 18 December 2020, the interim audit mission of the financial statements of the Court and the Trust Fund for Victims, focusing on internal control aspects, could not be held in person at the ICC Headquarters in The Hague, due to travel restrictions adopted by the Dutch and French national authorities in the context of the Covid-19 pandemic. The audit team and the Court, in particular the Registry, established a protocol and alternative processes for conducting audit work on a remote basis, made possible by secure access to information, as well as via periodic secure electronic conversations and video-conferences.

As to the final mission, focusing on the financial statements and the International Public Sector Accounting Standards (IPSAS) reporting requirements, took place under normal conditions in The Hague from 17 May to 4 June, 2021.

The other work, with respect to the Court's oversight bodies on the one hand, and the administrative management of the Presidency and the Office of the Prosecutor on the other, which could not be carried out

remotely, was also delayed in relation to the initial schedule, but could be carried out successfully, with on-site missions to The Hague finally being organized in May and July 2021.

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I would like to give you a brief overview of the four reports which were filed in 2021 and which deal with the following:

- The financial statements of the International Criminal Court for the year ended 31 December 2020;
- The financial statements of the Trust Fund for Victims for the year ended 31 December 2020;
- Improvements to be made to the Court's governance oversight; and
- The administrative management of the Presidency and of the Office of the Prosecutor.

We were able to present the two financial audit reports, submitted on July 15, and to discuss them in depth virtually via videoconferencing before your Audit Committee on July 27, and then before your Committee on Budget and Finance on 10 September.

During the same meetings, information was provided with respect to the other two reports. The report on the Court's oversight bodies was sent directly to your Assembly on 9 September 2021, and the report on the Presidency and the Office of the Prosecutor was submitted on 22 October, 2021.

With regard to the financial year 2020, we issue an unmodified opinion on each of the two financial statements – namely the accounts of the International Criminal Court and those of the Trust Fund for Victims – whose fairness, regularity and accuracy as well as conformity with the International Public Sector Accounting Standards (IPSAS) we are called upon to certify.

Like last year, we would like to lay emphasis on the quality of the relationship and cooperation with the Court, and chiefly with the Registry and the Accounting, Finance and Management Departments, which are our natural contacts and which have responded with all due diligence and efficiently to our questionnaires and requests for resources and documentation.

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Let me now turn to the first audit report on the International Criminal Court's financial statements for the fiscal year 2020.

The financial statements for the fiscal year 2020 show a loss of €9.8 million, although less than the previous year's loss amounting to €14.5 million.

This smaller loss is primarily due to a decrease in non-staff expenses, which is attributable to the impact of the Covid-19 pandemic on travel benefits and representation expenses, which decreased by €3.5 million.

The Court's largest expense item, namely that of the staff and personnel, continued to grow in 2020, recording a 1.60% increase compared to a 1.06% increase in 2019. In terms of volume, staff costs represent €16.7 million in 2020, compared to €14.9 million in 2019.

The Court's difficulty in obtaining payment of financial contributions from a number of States Parties has worsened significantly in 2020, with arrears increasing from €25.8 million at the end of 2019 to €38.4 million, and far exceeding the historical peak of €1 million in 2017.

In essence, as in the previous year, the five most important outstanding arrears represent 96 percent of the outstanding balance.

In the first half of 2021, toward the end of our financial audit work, the arrears situation continued to deteriorate. Nonetheless, we concluded, as we did for the fiscal year 2020, that while cash flow would remain tight at the end of 2021, it should not go on deteriorating to the point where it would jeopardize the organization's continuity of activity by the end of 2021. This has enabled us to issue an unmodified opinion on the financial statements for the year ended 31 December 2020, as I have already mentioned.

Our findings from the Court's audit of the 2020 financial accounts have not given rise to any new recommendations.

The financial report accompanying our opinion also provides an update on the follow-up of recommendations from our previous audit reports, both with respect to the certification of financial statements and with respect to the Court's performance, as well as shows that these recommendations continue to be progressively addressed and implemented.

At the end of the fiscal year 2020, twenty-two recommendations were still pending. At the completion of our audit engagement on 31 May 2021, we found that seven recommendations had been implemented.

Furthermore, taking into account the mission of the independent experts, we deemed that, when a recommendation similar to one of our recommendations had been issued in their report, it was now subject to follow-up within this new framework, and, hence, no longer fell within the scope of follow-up by the external auditor. This represents eleven cases.

Only four recommendations remain open from previous financial years. These remaining four recommendations have only been partially implemented and will have to be reviewed and re-examined in future reports by the External Auditor.

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I will now present our second financial audit report, which deals with the Trust Fund for Victims.

The orders of magnitude differ here. The amount of resources available to the Secretariat of the Trust Fund, which corresponds to Major Programme

VI approved by your Assembly in the Court's budget, amounted to €3.2 million for the fiscal year 2020, to which were added voluntary contributions of €3.0 million. The Fund's financial performance statement shows an accounting surplus of €1.9 million, a stable one compared to 2019. There is an increase in revenue in 2020 (+€0.8 million, or €6.7 million in 2020 compared to €5.9 million in 2019) equivalent to the increase in program expenses (+€0.8 million, or €1.9 million compared to €1.1 million in 2019). The Fund's financial position, with net assets amounting to €4.8 million at the end of 2020, continues to reflect a very high level of provisions, with provisions accounting for over 90% of liabilities.

The year 2020 saw an increase in voluntary contributions from €2.7 million to €3 million. These contributions still represent 44.8% of the Fund's resources.

Our report notes that of the four recommendations that existed at the beginning of 2020, three were implemented and the last one was partially implemented by the end of the year. We thus did not have to make any new recommendations.

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With respect to our report on the Court's governance oversight bodies, I wish to begin by recalling that, by its resolution adopted on 10 December, 2019, the Assembly of States Parties (ASP) had – and I quote – "*[recalled]* its request to the External Auditor, the Cour des comptes, 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."

Being the source of this request, the Hague Working Group (HWG) had noted that, apart from the Assembly, its Bureau and its working groups, several groups were given oversight of the Court, but that representatives of States Parties have only indirect and limited access to their work, and no means to control the work of the supposedly "subsidiary" bodies of the Assembly, the Committee on Budget and Finance and the Audit Committee.

Subsequent to a number of preliminary consultations, we concluded that the only means to carry out this work was to bring together at a high level, in the framework of a workshop, representatives of all the bodies concerned in view of comparing and contrasting their respective points of view.

Following numerous successive postponements and delays, this workshop was finally held in The Hague on 24 and 25 May 2021, a workshop which brought together 22 officials. The workshop's key objective was to exchange views on the best means which were conducive to the improvement of the relationship between the members of the Assembly and the various oversight bodies of the Court – primarily the Committee on Budget and Finance and the Audit Committee, but also the Independent Oversight Mechanism and the Internal Audit.

Document ICC-ASP/20/6/Addendum 1 presents a verbatim report of the discussions held during this workshop. According to the aforesaid document, none of the External Auditor's proposals, which are based on the best practices in force in the majority of other international organisations, was supported by all the participants at the workshop, and that no participant made alternative proposals. The annexes presented in the above-mentioned document show that, demonstrating a high degree of conservatism, several participants challenged and contested the very legitimacy of the mandate given by your Assembly.

Faced with the rejection of any possibility of getting a greater involvement from States Parties in the Court's oversight mechanism, the

only way for the External Auditor to fulfil the mandate you gave him was to conduct a comparative analysis of costs, structures and similar processes in other international organisations.

This analysis led us to conclude that the Court's current oversight arrangements are both more intricate and more costly than in most other international organisations, which are larger than the Court in terms of their volume of activities and resources, without any evidence that the Court is better supervised than these other organisations. Another difference is that supervisory tasks usually undertaken by State representatives in these other organisations were largely delegated to experts in the case of the Court, particularly with respect to the budget preparation. Not only did this option create unnecessary duplication with the functions entrusted by the Assembly to The Hague Working Group on Financial Matters, but it also hindered the States Parties' right to oversee the exercise of their mandate, as the Committee on Budget and Finance and the Audit Committee were radically opposed to any form of "subsidiarity" vis-à-vis the Assembly of States Parties.

Based on the above, we have issued two major recommendations aimed at rearranging the mandates and hierarchical lines between States Parties and the Court's oversight bodies, so as to clearly re-establish the principle

of subsidiarity of the Court's supreme oversight with regard to your Assembly:

1. The first is to give, through the Bureau of the Assembly, permanent access to the Audit Committee to a limited number of delegates from States Parties as non-deliberating members; and
2. The second is to abolish the Committee on Budget and Finance in its current composition and to transfer its competence to The Hague Working Group or to one of its sub-groups of State delegates, thus making it coincide with the configuration of the vast majority of other international organisations.

The implementation of these two recommendations should be accompanied, as a corollary, by the disappearance of the anomaly constituted by the existence of an autonomous "Executive Secretariat" of the Committee on Budget and Finance and of the Audit Committee within the Secretariat of the Assembly. The purpose of this Executive Secretariat is precisely to obstruct the principle of subsidiarity of these two Committees vis-à-vis the States Parties and to restrict the fundamental prerogatives of the latter in matters of supervision, particularly with respect to matters of budget and finance.

Moreover, we have made two recommendations in view of streamlining and improving the effectiveness of the Court's internal oversight system, which are also based on best practices found in most other international organisations:

1. The first is to submit the approval of the annual internal audit program, as well as the evaluation of the Director of the Office of Internal Audit, to the Coordination Council (the "CoCo"). Similar to other international organisations, the Audit Committee would only be responsible for ensuring that, through this process, the internal audit is not put under any pressure by management in view of limiting its independence; and
2. The second is to merge the Office of Internal Audit and the Independent Oversight Mechanism into a single Major Programme.

We also recommend that the relevant organs of the Court warrant that any reform of the ICC, including its any reform of its governance oversight bodies, does not result in any cost increase.

As you can see, these issues are sensitive and highlight the information flows and power plays between States Parties, Court departments, and

expert-dominated *sui generis* bodies, and you are well aware of this issue, since you have entrusted us with this work. We offer you our analysis and our proposals, emphasizing that the decisions to be taken rest in your hands, not in those of the organs of the Court, and even less in those of the so-called "subsidiary" organs.

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Finally, I would like to present our audit report on the administrative management of the Presidency and the Office of the Prosecutor, which was initially scheduled for April 2021, but which could not be carried out until very late, as the on-site mission took place in The Hague from 5 to 16 July 2021.

This audit shows that the "One Court" principle is being applied unequivocally and without calling into question the independence of the judicial function and the Office of the Prosecutor.

The administrative functions of these two independent bodies are carried out for the most part by the Registry, which deploys digital applications in most support functions in order to facilitate exchanges with their users,

or disseminates procedures to mobilise its services and align their interface with operational services.

Analysis of the budgets and of their implementation confirms that the support resources are overwhelmingly available to the Registry; the cost of its administrative staff amounts to circa €4.5 million (mainly in the service management division), for 186 jobs, compared with €1.3 million in the Office of the Prosecutor with 21.2 jobs, and €0.4 million and 2.8 jobs in the Presidency.

In 2016 and 2017, at the request of your Assembly, an in-depth exercise was conducted to identify "synergies" and eliminate duplication between the Court's organs. This review resulted in a few mutualisations or capacity pooling for a limited total amount of savings amounting to €82,200. These savings concerned in particular the IT area, where a proportion of the contracts could be shared. This limited result is due to the fact that very few duplications had been identified within each organ. The Court's efforts in this direction have probably not been sufficiently explained to your Assembly in the past.

Four years after this study on synergies, the External Auditor has reached the same conclusion. Some areas for improvement have been identified,

such as the need to clarify responsibilities for monitoring contracts between the Registry's procurement section and the operational units of the other Organs. However, no duplication was found despite the sometimes misleading appearance of identical section or unit names from one Organ to another, and, at the end of this audit, the External Auditor made only one recommendation, the objective of which is to formalize the concept of business partner, as well as the service provision relationships between the Registry and the other Organs of the Court.

In addition to this single recommendation, the external auditor made 20 observations on the organisation or management of the Presidency, the Office of the Prosecutor and the Registry. In view of the 384 recommendations resulting from the Independent Expert Review, this approach has been adopted so as not to overburden the Court's services, even if some of these observations suggest possible improvements, which will be up to our successors to take into account or not.

Amongst other observations, we would like to point out those proposing:

- to review the rules on the procedure for reporting incidents by whistleblowers and their protection should be reviewed in order to align them with the standards in force at the United Nations (observation 13);

- to monitor in a better manner the disciplinary proceedings initiated and the sanctions imposed within the Court's organs (observation 14);
- to clarify responsibilities between the procurement section and the operational units for the monitoring of contracts (Observation 16);
- to establish a formal mechanism for the review, based on an inter-Organ and annual approach, of the appropriateness of maintaining permanent representation in the countries where the Court operates (Observation 19); or, finally,
- to systematically seek to share premises with peacekeeping missions or United Nations agencies, for obvious reasons of security, economies of scale and synergies (observation 20).

Even if they do not formally constitute recommendations, these observations undoubtedly deserve the attention of the organs of the Court and of the Assembly.

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In conclusion of this last presentation of our work to your Assembly at the end of our mandate, I would like to make four points on behalf of the External Auditor, Mr Pierre Moscovici.

- First, during our term of office, we produced 32 reports, including 18 financial audit reports, concerning both the accounts of the Organisation and the accounts of the Trust Fund for Victims, as well as 14 management reports and issued 124 recommendations. Of these 124 recommendations, 84 percent were considered implemented (104 in total) and 13 percent were abandoned or deemed closed (i.e. 16). More specifically, in 2021, as part of the follow-up of our financial and performance audit recommendations, of the 22 recommendations still open at the end of the fiscal year 2020, we decided to consider 11 of them closed, leaving four recommendations still open. While respecting our programme independence, we have sought to address the most important issues for the Organisation and to make recommendations that are as operational as possible.
- Then, we would like to reiterate the interest and pleasure that the teams of the French Court of Auditors have had for almost ten

years to cooperate in the great mission of the International Criminal Court, and to express our very warm wishes for the future success of your Organisation.

- We would also like to thank once again all the departments for their active collaboration in our audits as well as in the implementation of their follow-up, all carried out in an atmosphere of seriousness and dialogue that we greatly appreciated.
- Finally, we would like to thank the States Parties for the confidence they have placed in us and express our very best wishes for the work of our South Korean colleagues who are now taking over from us.

Madam President, ladies and gentlemen, I thank you for your attention and I remain at your disposal in view of answering your questions.

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