



## ***QUESTIONS & ANSWERS ON AN INDEPENDENT OVERSIGHT MECHANISM FOR THE INTERNATIONAL CRIMINAL COURT***

### ***What is oversight and what does it do?***

‘Oversight’ in management jargon, is equated with ‘supervision’ in the sense of being a general review of institutional performance with particular attention to failures to carry out mandates, to preserve discipline and to inefficiency and poor productivity. Oversight is performed by bodies, units and processes that provide ‘supervision’ and ‘watchful care’ to an organization.

Through its fundamental elements of audit, evaluation, monitoring, inspection and investigation, oversight helps an organization to enhance its effectiveness, productivity and integrity.

### ***What is the ICC required to do about oversight and how has it complied with these requirements?***

The Rome Statute says: “The Assembly of States Parties may establish ... an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy”. Discussion of this issue at the ICC uses the term ‘independent oversight mechanism’ to refer to a combination of offices or bodies and processes.

The only oversight services that the ICC has been already performing are external and internal audit. The Office of Internal Audit (OIA) is the Court’s internal auditor and it provides the heads of organs of the Court with an advice about its internal financial controls, management systems and practices. The Court’s external auditor is the National Audit Office (NAO) of the United Kingdom. The NAO audits the accounts of all organs of the Court and reports to the Assembly of States Parties (ASP or Assembly) on the economy, efficiency and effectiveness with which the ICC uses its income.

In terms of the investigation function of oversight, the Court has developed only provisions relating to cases of misconduct of the Court’s senior officials. These provisions also set out the disciplinary measures for committing these crimes. The Court’s Staff Regulations deal with duties, general rights and obligations, and privileges of the staff members of the ICC. Thus far, the ICC has not developed any staff rules on sexual violence and abuse.

### ***Has the ICC taken any steps towards establishing an independent oversight mechanism?***

The ASP has been trying to undertake some steps towards creation of an independent oversight mechanism. The Assembly adopted resolutions with provisions relating to an independent oversight mechanism during its fourth and fifth sessions. During the sixth session in December 2007, the Assembly renewed its invitations to the Court to continue considerations and to submit concrete proposals for the establishment of an independent oversight mechanism to its next session in November 2008.

Consultations among States Parties on the matter of independent oversight mechanism used to be coordinated by a specially assigned Facilitator. However, after he stepped down from his function in February 2007, there have been difficulties with identifying and appointing a new facilitator. Also, the matter of the oversight has been recently deferred because the Court is awaiting the outcome of ongoing consultations on a similar mechanism being considered by the United Nations.

### ***What are the structures and forms of an independent oversight mechanism?***

Oversight is the primary responsibility of member states of an organization. They delegate some authority for oversight to a secretariat of the organization (‘internal oversight’) and some to the external oversight bodies





(‘external oversight’). The primary objective of internal oversight is to assist the executive heads of an organization by providing advice on internal control and management practices based on a systematic and independent review of the organization’s entire operations. External oversight bodies play a fundamental role in advising and assisting the member states of the organization in discharging their oversight responsibilities. Also, external oversight supervises the internal oversight and its activities.

There are various structures of oversight and various combinations of its services. Usually the external oversight is performed by standing committees subsidiary to an organization’s governing legislative body. Internal oversight is usually based on whatever combination of elements and functions best suits the overall managerial arrangement of the organization. Sometimes, organizations integrate all five elements under one umbrella (audit, evaluation, inspection, monitoring and investigation), but often they separate these functions. The key factor is how the structure, purposes and goals of an organization shape the creation and form of its independent oversight mechanism.

### ***Does the ICC need an independent oversight mechanism?***

Yes. To ensure the Court’s continuous success and world-wide recognition, it must show that it governs itself effectively, productively and with integrity. It must have a clear delegation of authority and accountability and individual responsibilities, duties and reporting lines must be clearly delineated. Also, even in an organization as well respected as the ICC, it is just a matter of time before serious cases of misconduct, including sexual exploitation and abuse occur (not only in The Hague but also in the situation countries where the ICC is investigating, prosecuting or both).

The independent oversight mechanism would monitor all aspects of the Court’s performance, functioning and activities. It will help the ICC be more effective and efficient by enhancing the management of the human and financial resources and by providing more transparent assignment of responsibility and accountability. It would contribute to the Court’s independence, impartiality and neutrality. Also, the mechanism would investigate situations involving the Court’s personnel and operations. It would hold the Court’s staff members accountable for their violations and would act as a form of prevention. It would enforce and expand professional standards as well as guarantee the culture of ethics and right conduct.

### ***Is the UN oversight mechanism a good model for the ICC’s future independent oversight mechanism?***

There is a view that the ICC should copy, or at least adapt, parts of the UN’s oversight structure, especially its internal oversight office. Opponents say however, that the key factor is how well an oversight mechanism fits into the overall system of administration of an organization. The structure, organization, purposes and goals of the Court should shape the creation of its own independent oversight mechanism.

UN governance and oversight is conducted both internally and externally. The Office of Internal Oversight Services (OIOS) operates as an internal mechanism and provides numerous elements of oversight – audit, inspection, evaluation, program monitoring, investigation and consulting services. The Joint Inspection Unit (JIU) conducts external independent evaluations, inspections and investigations and provides an independent review of the efficiency of UN services, programs and proper use of funds. The numerous purposes and activities of the UN are very broad. The scope of activities of OIOS is organized accordingly. The composition of the JIU and its mandate also reflects the extensive, wide-ranging UN system. Both OIOS and the JIU are unsuitable models for the Court. The ICC is a single-purpose institution that needs an oversight mechanism which is tightly focused and organized.





### ***How can the ICC learn from the organizational and management difficulties of the UN ad hoc Tribunals?***

The establishment of a new organization, including international tribunals is especially risk-prone. That was one of conclusions of OIOS after it conducted its review of two UN *ad hoc* Tribunals – the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). The establishment of these two entities shared some difficulties, for instance, time pressure, inadequate and poor planning, delayed or insufficient delegation of authority, and late availability of resources. As a result, the UN Tribunals faced accumulations of problems and severe efficiency losses in the initial phases of the operations. The Tribunals have dealt with administrative and management difficulties as well as with poor human resources management.

The ICC should learn from the UN Tribunals’ experiences which show that human resources as well as financial and administrative management are crucial for proper and efficient functioning of such entities.

### ***What are the first steps the ICC has to take to resume action on an independent oversight mechanism?***

One of the first steps the Bureau of the ASP must take in order to establish an oversight mechanism is to appoint a new Facilitator to coordinate the consultations. The Bureau has already established some functions to help guide discussions on relevant issues, such as on the issue of permanent premises or on equitable geographic representation and gender balance in the recruitment of staff members (both have been established within The Hague Working Group). Secondly, as many representatives of civil society say, the future consultations on the independent oversight mechanism should take place in The Hague Working Group instead of the New York Working Group. Such a solution would provide regular consultations and involvement about the matter between the Bureau and the ICC. In addition, the dependence of the Court on the UN discussions on a similar mechanism would be reduced.

### ***What are possible recommendations on the mandate and responsibilities of an independent oversight mechanism?***

According to article 112(4) of the Rome Statute, an independent oversight mechanism would conduct inspections, evaluations and investigations. It does not specify whether it should be internal or external. However, every organization needs a system of internal and external oversight mechanisms in order to ensure its transparent and proper functioning.

The mechanism would exist in two dimensions: internally and externally. The external oversight would be performed by a standing oversight committee to the ASP and would provide State Parties with objective information and advice regarding the management of the Court. The internal oversight could be created in two ways either by establishing an internal oversight office or by creating a single Inspector General and staff. Each of these two solutions would have a different combination of oversight services. An internal oversight office would consist of independent experts with excellent knowledge and experience about oversight and governance matters, integrating oversight elements under one umbrella. Alternatively, an internal Inspector General would separate oversight elements and be responsible for investigations only, dealing only with cases involving the Court’s personnel or involving the Court’s operations.

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