

## ICC Governance, Accountability, and Oversight Frameworks - an (informal) IOM Information Paper

### A. Introduction

1. In its broadest sense, governance<sup>1</sup> can refer to how the performance, achievements and actions of an organization (including its senior management) are controlled and overseen by its core stakeholders, whilst an accountability framework<sup>2</sup> outlines how an organization is held to account by its various stakeholders for both its actions and the wider effect of these actions on the stakeholders.
2. Oversight is a generic term that is often used when referencing how the activities of an organization are overseen. Oversight refers to the practical activities that are undertaken in order to give assurance to the relevant governing bodies of an organization that relevant standards and objectives are being met, including those relating to the efficient and effective use of resources, and to provide information to stakeholders who are concerned with holding the organization to account for its actions.
3. The objective of this document is to explain what the office understands by ‘governance’ and ‘accountability’ in the context of the International Criminal Court (“Court”), and more importantly to explain how, in its view, the Independent Oversight Mechanism (IOM) fits into these systems. The document will also attempt to explain, from an IOM perspective, how its inspection, evaluation and investigation functions (all of which can come under the umbrella term of ‘oversight’) differ from or complement existing oversight activities, such as internal audit and external audit.
4. It is also important to consider whether governance and accountability frameworks are both effective (i.e. are there clear governance and accountability objectives and are these being met?) and efficient (i.e. are these frameworks achieving such objectives to a high standard at a reasonable cost and involving the least possible disruption to the organization?). The same can also be said of the oversight functions, especially concerning whether there is any duplication of functions. In an ideal world, an evaluation of these issues would be undertaken; however, this information paper has as its objective the mere provision of information on these topics to aid further discussion.

### B. Governance and accountability frameworks

5. Whilst intrinsically linked, and often used interchangeably, there is in fact a subtle and important distinction between governance and accountability. In essence, a governance framework, i.e. a collection of relevant governance bodies and fora, primarily focuses on how an organization achieves its objectives whilst an accountability framework focuses more strongly on the impacts or consequences of its actions and outputs on its stakeholders.
6. In the case of the Court, its stakeholders include a diverse group, including but not limited to, the States Parties and the tax payers of those funding states, the United Nations and its related organizations, non-governmental organizations, Court staff and personnel, victims and witnesses, accused persons, the wider populations of situation countries, the world's legal systems, and in effect anybody affected by the Court's activities. An accountability framework should look to how the Court is held accountable for its actions by these various stakeholders, and in practice it can be either a formally defined framework or a de facto framework, or both. An evaluation of the effectiveness of this framework would be a fascinating topic.
7. From this wider group, it is a relatively small sub-set of ‘core-stakeholders’ who actively participate in the governance of an organization. This subset will usually include those who are funding an organization, in the Court's case its States Parties, but in an

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<sup>1</sup> Institute on Governance - <http://iog.ca/defining-governance>.

<sup>2</sup> Accountability Frameworks in The United Nations System – Joint Inspection Unit report JIU/REP/2011/5.

international organizational context can and often does include relevant interested parties such as NGOs and representatives of the staff and personnel of the organization.

8. A governance framework can be thought of as having two distinct elements. The first is a sub group of functions and processes that operate from within the organization, such as senior management coordination, regulatory setting mechanisms, strategic planning and performance review, risk management and internal audit. We then have an outer layer of governance overseeing the actual organization, and this can include the Assembly of States Parties, the Bureau and its working groups, and bodies set up by the Assembly such as the Committee on Budget and Finance and the Independent Oversight Mechanism.

9. The effectiveness of the inner governance framework is in part assessed and reported on by the oversight functions described below, while it is the outer layer of governance which is formally responsible for managing and ensuring the effectiveness of the inner governance layer.

10. The Court's high-level governance framework is shown in diagram format at annex I.<sup>3</sup> This diagram attempts to also show the derivations of authority for the governance components, with the key roots being the Rome Statute and the Court's ethical values and principles.

11. Annex II sets out the various components of both an accountability and a governance framework in a layered approach, with internal organization governance processes closest to the centre and external mechanisms farthest from the centre.

12. Annex III lists in table format the various external governance bodies at the Court, together with a 2017 budgeted direct cost for these activities.<sup>4</sup>

13. A specific accountability framework diagram has not been attempted. Whilst such a diagram would conceptually appear similar to the governance diagram at annex I, to be complete it would first require a stakeholder analysis to be undertaken and would then perhaps be best shown by specific accountability topic, i.e. accountability for financial resources used, or for legal decision-making, or for impact on victims, etc. The results of such an exercise would be very interesting.<sup>5</sup> An IOM accountability framework document is being developed for inclusion on the IOM intranet site.

## C. Oversight functions

14. Oversight is a broad term generally used to cover all functions that either sit outside internal management systems or that have an evidenced degree of independence from management and exist to review, measure, assess and/or report on what an organization has achieved, how it achieved it, and the internal practices that are in place to efficiently and effectively achieve its objectives. Oversight functions report on these matters to the key stakeholders in the governance framework and are a core part of the overall accountability framework.

15. If we think of oversight as being a continuum of activities, we can think of the following oversight activities existing somewhere along this continuum: external audit, internal audit, inspection, investigation and evaluation. Each of these oversight functions is defined in table format at Annex IV with the 2017 budgetary cost of each function also detailed. For reference, the direct cost to the Court in 2017 of these oversight functions was well under one per cent of its total budgeted costs.

16. In brief, external audit is primarily charged with verifying the accuracy and completeness of the Court's financial statements and in so doing will include a review of the effectiveness of the inner layer of governance control systems overseen and operated by the senior management.<sup>6</sup> In doing so, the external auditors report to the Assembly on their

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<sup>3</sup> The diagram has been drawn by the IOM for information purposes and is not an official ICC sanctioned document.

<sup>4</sup> Costs only include direct costs budgeted for in the approved Court budget. Overhead costs associated with servicing these functions by the Organs of the Court are not accounted for.

<sup>5</sup> Such an exercise may (and is likely to) have been undertaken by the Court but an initial IOM review could not find a summary stakeholder analysis diagram.

<sup>6</sup> As per regulation 12.1 of the Court's Financial Regulations and Rules.

findings. In addition, from 2017 the Assembly has also charged the Court's external audit with undertaking one performance audit exercise per financial year, in which an assessment is made of the efficiency and effectiveness of a specific Court administrative process or system.

17. Internal audit is a key part of the inner governance layer and advises senior management on the application, completeness, effectiveness and efficiency of internal control mechanisms, including other aspects of the inner governance system, such as risk management and strategic planning.<sup>7</sup> Originally maintaining independence of action through a direct reporting line to senior management, and being seen as an internal function advising senior management, internal audit functions are now required to report to the stakeholders in the outer governance layer, such as now happens through an Audit Committee at the Court, thus in some respects appearing and acting more akin to an external oversight function.

18. Evaluation is concerned with outputs and results: it is an activity that seeks to assess exactly what a process, programme or activity has achieved, how it achieved it, and how efficiently and effectively it did so.<sup>8</sup> In so doing, an evaluation can also assess and review the impact of an activity, as it is primarily designed to aid future programme and activity management. Evaluation is absolutely central to an accountability objective, as it informs stakeholders, including management, on practical matters concerning the achievement or not, of its core objectives and outputs. At the Court, through the IOM's dual mandate to undertake evaluation work at the request of either the Heads of Organs or the Assembly, an evaluation function can and should operate to aid both the inner and the external governance layers.

19. Inspection refers to an on-the-spot compliance check of an activity with whatever regulatory procedures are in place. In this case it is not referring to inspection activities that are built into control processes as standard control processes, but ad hoc and often unscheduled checks requested by senior management or the governance outer layer bodies. To this effect, the IOM may undertake inspection work at the request of either a Head of Organ or the Assembly.<sup>9</sup>

20. Investigation is a stand-alone function examining and reporting on reported breaches of the Court's regulatory codes.<sup>10</sup> Investigation can be undertaken by and for either layer of governance. At the Court, while all reports of misconduct must be reported to the IOM, the IOM has discretion to either investigate the matter itself or to refer the report back to a Head of Organ to undertake an investigation. In all cases the IOM investigation report is referred to the relevant Head of Organ, or Presidency if an elected official is concerned, for action as per the Court's disciplinary regulations.

21. The above oversight activities and the terms used to describe them differ between countries and between organizations, in spite of international practitioner bodies for each function attempting to set definitions and standards. One reason for these variances is that the oversight activities defined often have significant areas of overlap. For instance, both internal and external audit include a remit to monitor and report on control activities whilst both evaluation and performance audit have as a core objective a systematic review of the efficiency and effectiveness of processes. The diagram at annex V attempts to show where these areas of potential overlap are.<sup>11</sup>

22. In addition, there has also been a gradual but dramatic shift along this oversight continuum as some functions expand in their remit. A good example has been the expansion of internal and external audit into previously more evaluative areas through a developing performance audit remit. Broad changes within the commonly accepted remits of oversight functions are also shown in pictorial format at annex VI.

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<sup>7</sup> A formal definition is provided by the Institute of Internal Auditors at [www.IIA.org](http://www.IIA.org).

<sup>8</sup> See the IOM evaluation mandate at ICC-ASP/12/Res. 6 – also the United Nations Evaluation Group definition at <http://www.uneval.org>.

<sup>9</sup> See the IOM evaluation mandate at ICC-ASP/12/Res. 6.

<sup>10</sup> See definition of the Conference of International Investigators - <http://www.conf-int-investigators.org>.

<sup>11</sup> The diagram has been drawn up by the IOM for information purposes and as such reflects the judgements of the IOM, not the various individual oversight standard-setting bodies.

23. One risk of these varying oversight definitions is that there can be duplication within oversight mandates. This risk is commonly managed in four ways.

(a) The first is by discussion and cooperation between the functions so that work is planned and undertaken to eliminate such overlaps. As an example, the international standards followed by external auditors require that they consult with and take into account the work of the internal auditors when planning their external audit work.

(b) The second is by exhibiting flexibility in what is defined as audit, evaluation or inspection, either widening or restricting remits. As an example, not all audit functions undertake performance audit work, which can overlap with an evaluation function as both can concern the efficient and effective achievement of system objectives, although evaluation is a much wider form of oversight function. Similarly, where an internal audit remit includes a strong focus on compliance audit, there is less need for a pure inspection based function.

(c) The third means of avoiding duplication is by combining the functions, if possible, into a single oversight department such that all activities are actively planned together and under a single common senior manager in order to ensure the broadest possible coverage without duplication or overlap. This practice is common in smaller international organizations, although it is argued that the potential coordination benefits can be outweighed by the lack of specialism in some areas. This argument is especially forceful when applied to an evaluation function.

At the Court, the inspection, investigation (internal), and evaluation functions are all combined within the one IOM under a direct Rome Statute and Assembly mandate, whilst the Internal Audit function is a separate section established under authority of the Court's Financial Regulations.

(d) A fourth means of avoiding duplication is through the use of a common oversight reporting committee or fora, to which all oversight functions report and which in turn reports on oversight matters collectively to the Assembly. At the Court, a new Audit Committee has been established as a sub-committee of the Committee on Budget and Finance, in part to oversee and report on the work of the internal audit section, whilst the IOM and the external auditor continue to formally report directly to the Assembly (through the Bureau or the Committee on Budget and Finance as relevant).

24. At the Court, the risk of overlap or duplication is managed by a combination of points (a) and (c) above. The IOM combines the three oversight functions of inspection, evaluation and investigation under one managing office; while the risks of overlap between the IOM functions and internal audit, and between internal and external audit, are managed by coordination.

## **D. Conclusion**

25. Governance and accountability are core concepts that are central to the success of the Court. To be effective, governance and accountability mechanisms need to have clear objectives and these objectives need to in turn be clearly understood by all. The placing of these mechanisms in a diagrammatic format helps to evidence and explain how these core objectives are met, as well as to highlight duplications or gaps. The Court's governance and accountability frameworks are similar in format to those of many, if not most, United Nations common system organizations (noting that the Court is a 'related organization'<sup>12</sup> to the United Nations rather than a member organization).

26. Oversight is thus a key component of both a governance and of an accountability framework. Oversight is also a generic term used to describe a variety of different but linked functions. At the Court, the IOM combines three of these oversight functions within one office in order to allow an efficient and effective balancing of these activities within an

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<sup>12</sup> The Court is not a formal part of the United Nations, being neither part of the secretariat nor a formally designated Specialist Agency. Nevertheless, the Court does have a reporting line to the Security Council in certain cases, has a memorandum of understanding with the United Nations, is required by the Rome Statute to work with the United Nations, and operates the common system of pay and staff administration. As such the United Nations regards the Court as a "related organization" - see [http://www.un.org/en/aboutun/structure/pdfs/UN\\_System\\_Chart\\_30June2015.pdf](http://www.un.org/en/aboutun/structure/pdfs/UN_System_Chart_30June2015.pdf).

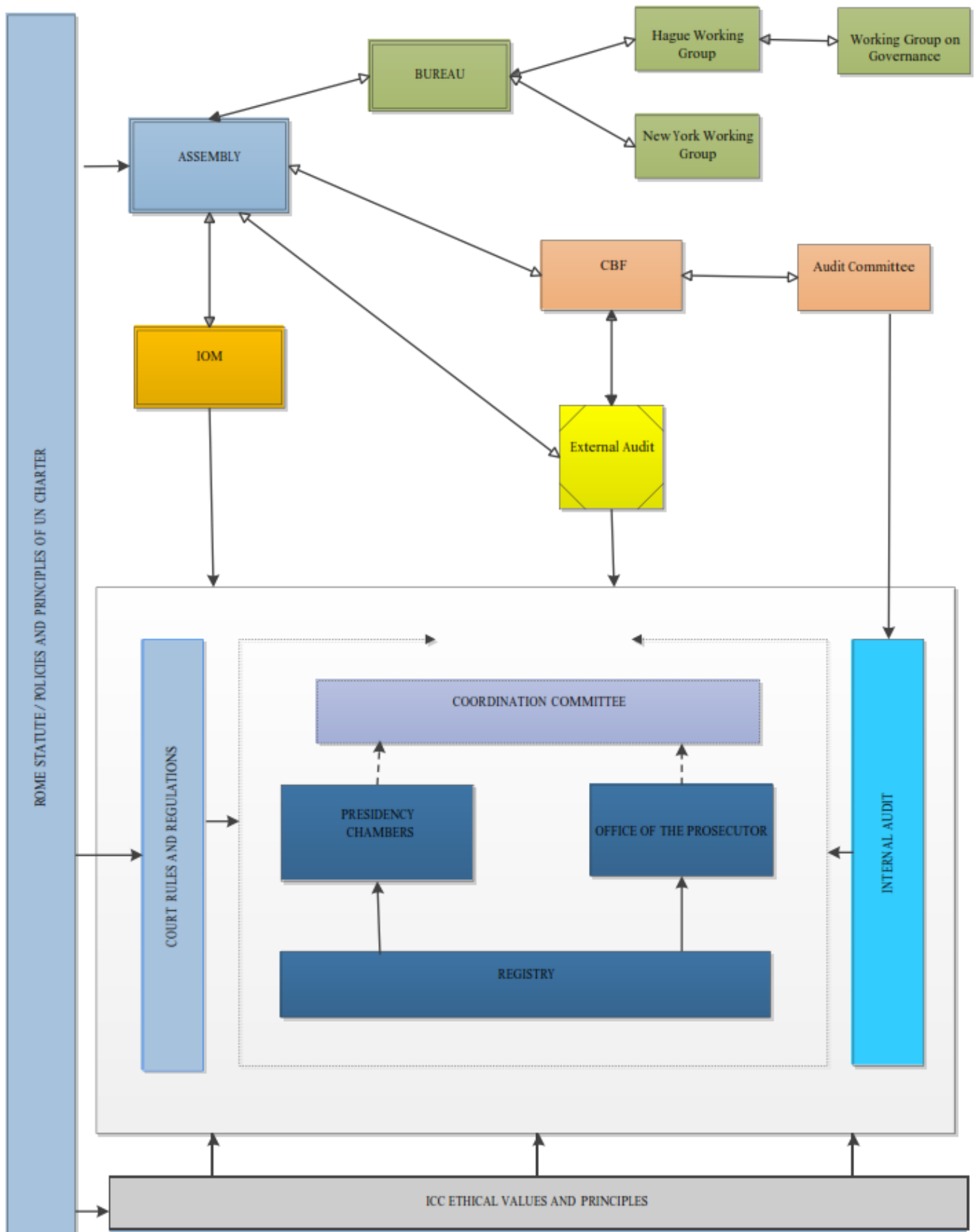
organization of the Court's size. The three IOM oversight activities complement the separate internal and external audit mandates, and areas of potential overlap between all the oversight activities are managed through coordination and planning activities. Finally, at a combined cost of less than 1 per cent of the Court's regular budget,<sup>13</sup> we would suggest that these oversight activities represent good value for money.

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<sup>13</sup> See annex V.

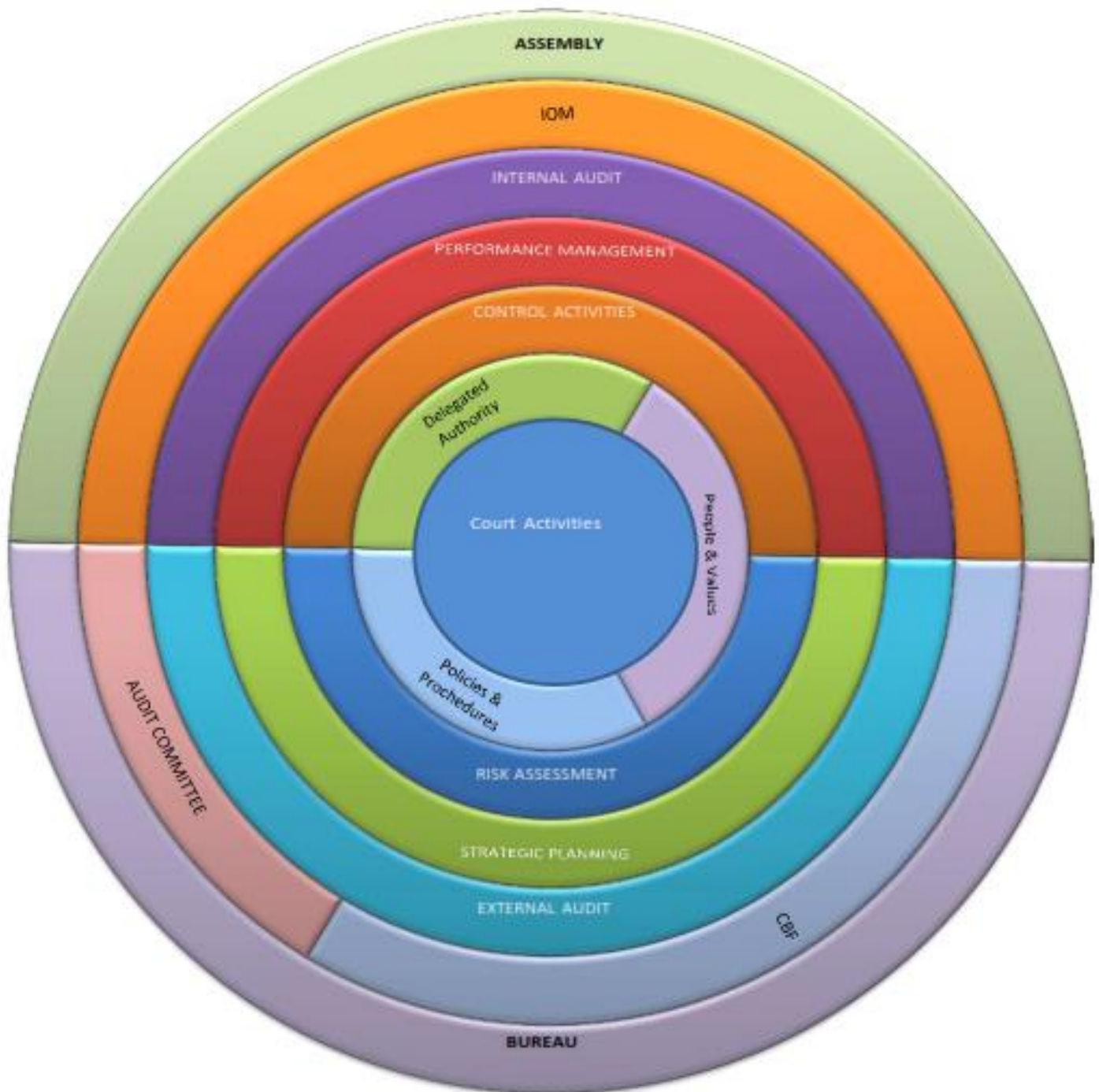
## Annex I

### Court high level governance / accountability framework



## Annex II

**Diagram showing layers of accountability and oversight activities on the Court's core activities**



## Annex III

### International Criminal Court - oversight bodies

ENTITY	INTERNAL/ EXTERNAL	FUNCTION	WORK INITIATED BY:	OUTPUT REPORTED TO:	DEFINITION	BUDGET 2017 (€'000)
IOM	External	Investigations	Complaints received from internal & external sources	Relevant Head of Organ (or to Assembly if Assembly requested investigation)	A legally based and analytical process designed to gather information in order to determine whether wrongdoing has occurred and, if so, the persons or entities responsible. <sup>1</sup>	554.8
IOM	External	Inspections	The Assembly  or Head of Organ	Assembly (or to relevant Head of Organ if Head of Organ requested).	A special (usually) unscheduled, on-the-spot verification made of an activity (or premises) directed towards the resolution of problems which may or may not have been previously identified. <sup>2</sup>	
IOM	External	Evaluations	The Assembly  or Head of Organ	Assembly (or to relevant Head of Organ if Head of Organ requested).	A judgement made of the relevance, appropriateness, effectiveness, efficiency, impact and sustainability of a project or programme, based on agreed criteria and benchmarks. <sup>3</sup>	
Internal Audit	Internal	Compliance & Control Audits  Performance Audits	Self-determined risk based plan approved by Audit Committee	Auditee and to Audit committee	An independent, objective assurance and consulting activity designed to add value and improve an organization's operations. It helps an organization accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes. <sup>4</sup>	649.2
External Audit	External	Financial Statement Audit <sup>5</sup>  Performance Audit <sup>6</sup>	Assembly	Assembly (through Audit Committee and CBF)	The Assembly of States Parties appoints External Auditors <sup>7</sup> , which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed.	52.0 <sup>8</sup>
Total costs of direct oversight mechanisms <sup>9</sup>						1,256
Oversight costs as a % of total Court approved budget (€144.6 million)						0.8%

<sup>1</sup> Paragraph 28 of the [Assembly Resolution ICC-ASP/12/Res.6](#)

<sup>2</sup> JIU Glossary of Evaluation Terms (JIU/REP/78/5) as noted in ICC/ASP/12/Res.6 section A

<sup>3</sup> Paragraph 16 of [Assembly Resolution ICC-ASP/12/Res.6](#)

<sup>4</sup> [The Institute of Internal Auditors](#)

<sup>5</sup> Annex to the Financial Rules and Regulations

<sup>6</sup> From 2017 the Assembly has requested the external auditor to undertake 1 performance audit per financial year.

<sup>7</sup> Regulation 12.1 of the Financial Regulations and Rules

<sup>8</sup> According to information extracted from SAP. Primary service is gratis from the relevant state, but expenses are charged to the Court.

<sup>9</sup> Excludes indirect and common costs such as accommodation, utilities, recruitment, etc.



## Annex IV

### International Criminal Court – external governance bodies

ENTITY	Established by:	Reports to:	DEFINITION / PURPOSE	BUDGET 2017 (€'000s) <sup>1</sup>
Assembly	Rome Statute	Member States	Established at Article 112 of the Rome Statute to provide management oversight to the elected officials of the Court; approve the budget of the Court; and perform other functions as set out by the Statute and Rules of Procedure and Evidence.	2,618.8
Bureau	Rome Statute	Assembly	Established at Article 112 of the Rome Statute to assist the Assembly in the discharge of its duties.	
CBF	Assembly	Assembly	The CBF <sup>2</sup> is 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 entrusted to it by the Assembly. It reviews the proposed programme budget of the Court and shall make the relevant recommendations to the Assembly. It also considers reports of the Auditor concerning the financial operations of the Court.	
Working Groups <sup>3</sup>	Assembly	Bureau	Established by the Assembly as working groups of the Bureau <sup>4</sup> . The Bureau assigns an annual mandate to each working group on behalf of the Assembly. Open to all interested parties although voting is restricted to member states. Reports in an advisory capacity to the President of the Bureau.	
Study Group on Governance	Assembly	Bureau (through the Hague Working Group)	Established by the Assembly <sup>5</sup> as a study group within the Hague Working Group to assist in strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court.	
Audit Committee	Assembly	CBF	The purpose of the Audit Committee <sup>6</sup> is to provide structured systematic oversight of the organization's governance, risk management, and internal control practices (including ethics and values). This advice and guidance also may include suggestions and recommendations to strengthen these arrangements.	
Total cost <sup>7</sup> as a % of Court 2017 approved budget (€144.6 million)				1.8%

<sup>1</sup> As per ICC Approved Budget for 2017

<sup>2</sup> ICC-ASP/1/Rcs.4

<sup>3</sup> The Hague and the New York Working Groups of the Bureau.

<sup>4</sup> ICC-ASP/3/Res.8

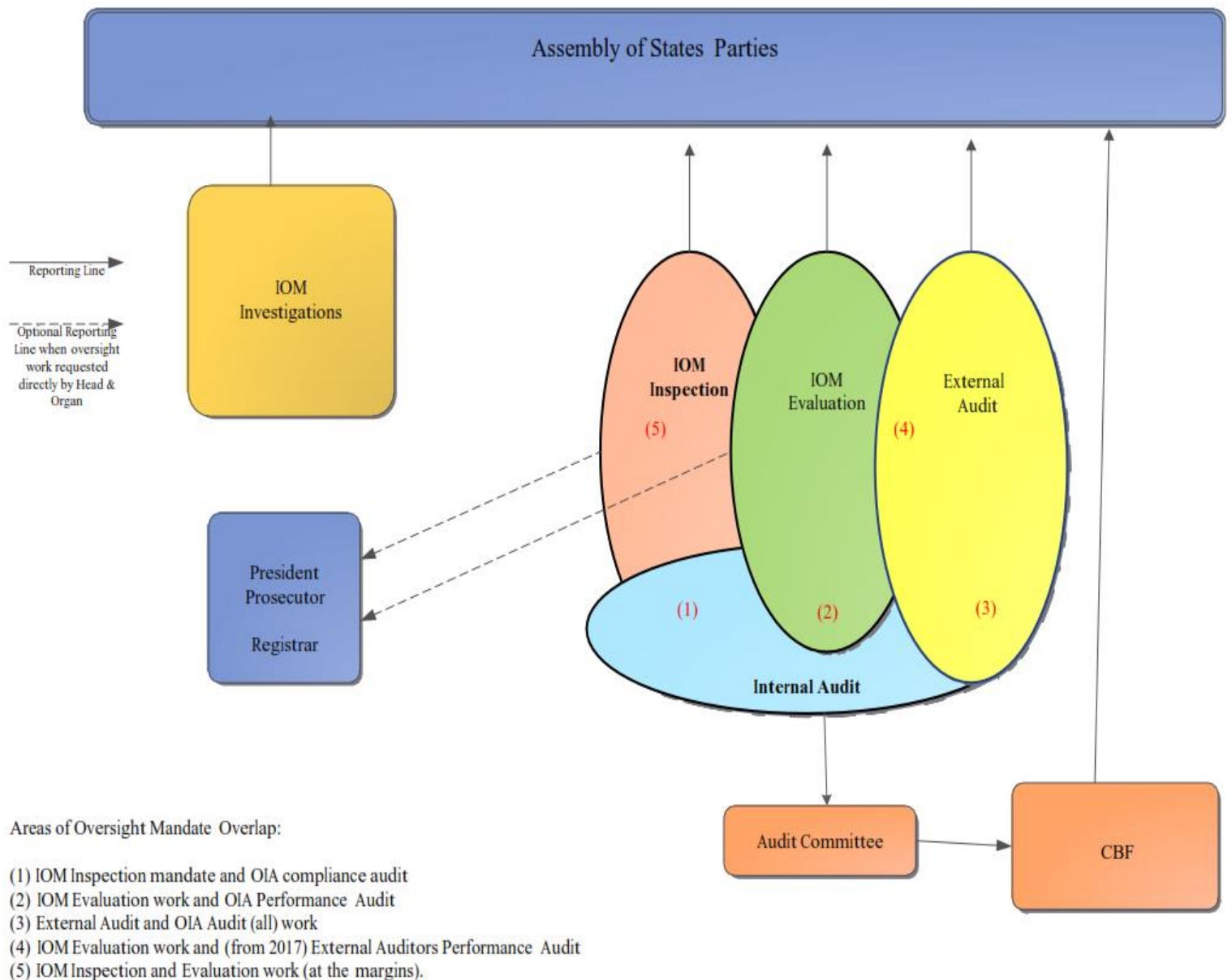
<sup>5</sup> ICC-ASP/9/Res. 2

<sup>6</sup> [Charter of the Audit Committee](#)

<sup>7</sup> Excludes indirect and common costs

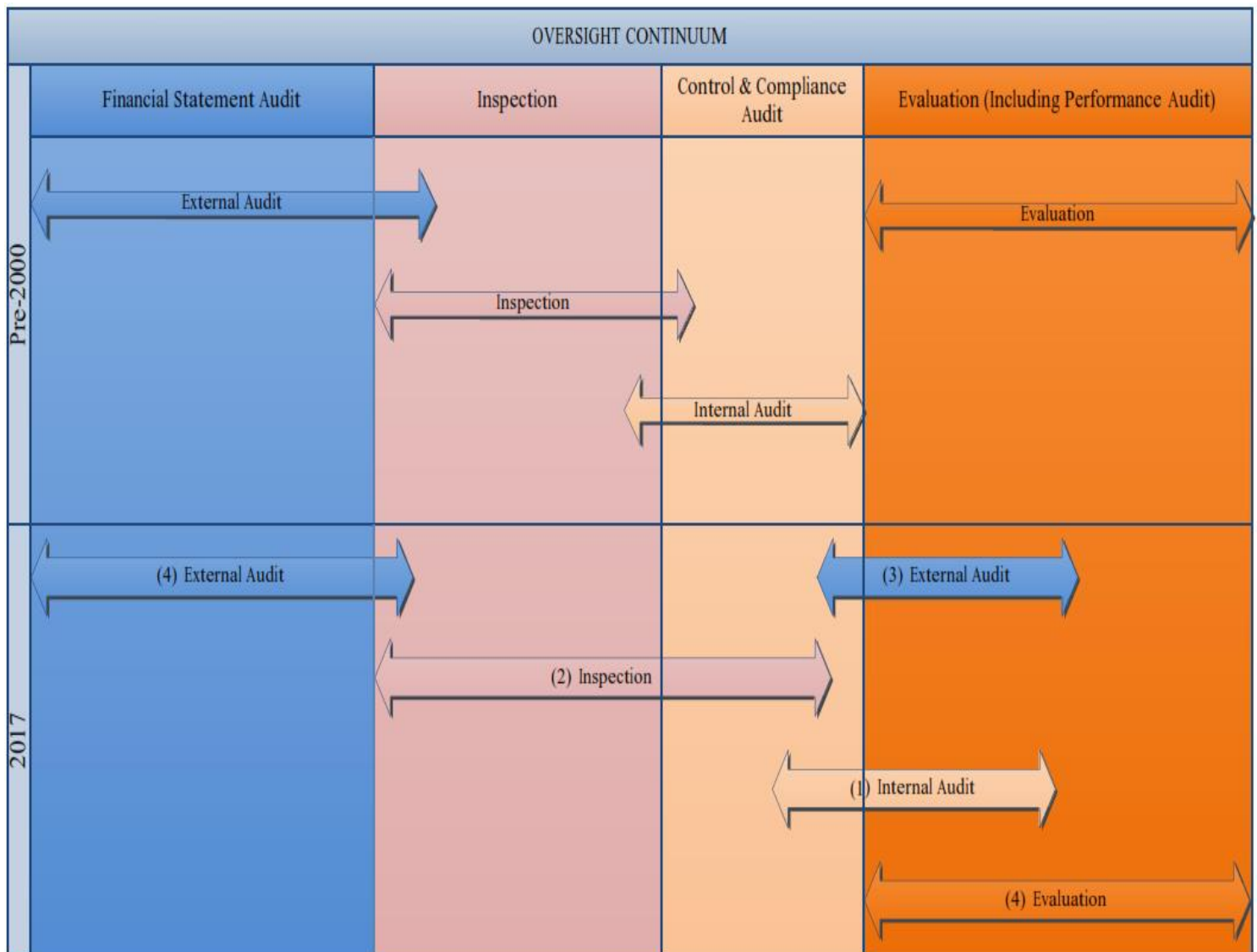
## Annex V

**Diagram showing areas of oversight overlap by function**



## Annex VI

**Diagram showing changes in oversight coverage by function**



Notes:

(1) Internal Audit has slowly expanded its mandate away from pure control & compliance audit into Performance Audit work with a focus on efficiency and effectiveness as a subset of evaluation work. As a result its focus on control and compliance has in practical terms diminished.

(2) As Internal Audit has moved away from traditional control and compliance work, the Inspection mandate has moved into a "vacuum" adding a control and compliance element.

(3) External Audit has increasingly added a Performance Audit role to its contracts (i.e. The ICC Assembly has contacted External Audit to do one performance Audit per annum from 2017).

(4) Traditional Financial Statement Audit and Evaluation mandate/functions have remained largely unchanged.