

Resolution ICC-ASP/12/Res.2

Adopted at the 12th plenary meeting, on 27 November 2013, by consensus

ICC-ASP/12/Res.2 Permanent premises

The Assembly of States Parties,

Recalling its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1,¹ ICC-ASP/7/Res.1,² ICC-ASP/8/Res.5,³ ICC-ASP/8/Res.8,⁴ ICC-ASP/9/Res.1,⁵ ICC-ASP/10/Res.6,⁶ and ICC-ASP/11/Res.3,⁷ and *reiterating* the importance of the permanent premises to the future of the Court,

Noting the report of the Oversight Committee on the permanent premises,⁸

Noting the recommendations of the External Auditor,⁹ as well as the reports of the Committee on Budget and Finance on the work of its twentieth and twenty-first sessions and the recommendations contained therein,¹⁰

Recalling its firm intention that the construction of the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, and the role of the Oversight Committee in implementing under its delegated authority any actions that might be needed to ensure that the project proceeds safely within budget, as well as that the ownership costs of the permanent premises be as low as possible,

Stressing that the permanent premises shall be delivered at a good quality standard within the approved budget, while avoiding elements that might not be essential to the proper performance of the core functions of the Court or that would otherwise negatively affect the total cost of ownership,

Reiterating the important role of the Court and the host State throughout the process and *noting with appreciation* their full cooperation with the project,

Reiterating the role of the Project Director in providing leadership and overall management of the project, and *recalling* his responsibility for meeting the project's goals, timeliness and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1 and the revised governance arrangements approved by the Assembly at its tenth session,

Scope of the project

Considering that its objective that the permanent premises project be completed by September 2015 and the Court be able to progressively move into and take full occupation of the new premises by the end of 2015 requires strong coordination and leadership of both the construction and the transition activities in order to prevent future cost overruns,

Considering that, pursuant to resolution ICC-ASP/6/Res.1, the Oversight Committee and the Project Director are endowed with the governance and management of the construction project, financed with extra-budgetary resources and in a multi-year budget dedicated to the project,¹¹

Also considering that the transition project was established under the operational responsibility of the Court, while its estimated costs were subject to approval for each

¹ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.

² *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III.

³ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

⁴ *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II.

⁵ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part II.

⁶ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II.

⁷ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. I, part II.

⁸ ICC-ASP/12/43.

⁹ *Official Records ... Eleventh session ... 2012* (ICC-ASP/12/20), vol. II, part C.1.

¹⁰ *Ibid.*, parts B.1 and B.2.

¹¹ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.1.

relevant project year, under the responsibility of the Project Director and the control of the Oversight Committee,

Stressing that a holistic approach to the permanent premises would enable coordinated strategies for implementing the policy of the Assembly for permanently hosting the Court in the new premises, and is expected to result in efficiencies and lower costs, so that the construction and transition costs could be kept as low as possible,

Noting that by unifying the construction and the transition projects the resources for the latter could be assessed on a multi-year basis, and the management of a unified project budget would allow using the savings in one area to balance costs in the other, while maintaining separate expenditures reporting obligations for construction and transition activities,¹²

Also noting that such unified budget would also avoid that these costs remain in the regular budget and therefore would allow prioritization of yearly budgeted resources for the core functions of the Court,¹³

Considering that the Oversight Committee and the Registrar have decided to cooperate in a spirit of mutual trust and collaboration in ensuring the achievement of the objective of a unified project,

Also considering that the revised governance structure adopted to that end is without prejudice to the legal framework established and the mandates conferred by the Rome Statute and by the Assembly of States Parties in resolution ICC-ASP/6/Res. 1 and following resolutions,

Noting the report of the Chair of the Oversight Committee on the use by the Committee of its delegated authority¹⁴ with the adoption, in agreement with the Court, of the decision to expand the scope of the project, so that it could now include both the construction and the transition projects and be considered as an overall unified project,

Noting that such decision, to ensure coordination, empowers the Project Director as the sole manager for both the construction and the transition projects, with dual reporting lines to the Committee and to the Registrar and under the financial strategy established by the Committee, while the Project Director maintains its independence from the Registry and remains under the authority of the Assembly, without prejudice to the managerial role of the Project Director,¹⁵

Stressing the need to maintain a clear separation between the respective roles of oversight carried out by the Assembly through the Committee, and the administration of the Court, while the Project Director would act as a common manager for both the Assembly and the Court,

Financial target 2014-2016

Noting the current estimates of the aggregated construction (€184.4 million) and transition (€11.3 million) costs, with a total level of €195.7 million and the need to provide the Project Director with an overall unified financial envelope to manage these costs for the lifetime of the project, as well as the funding scheme proposed by the Oversight Committee and as endorsed by the Committee on Budget and Finance,¹⁶

Further considering that this level is subject to review throughout the lifetime of the project and depending on the ongoing cost review, in particular, for the transition elements and with the aim of achieving by June 2014 a reduced cost level of no more than €193.7 million,

¹² *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. II, part B.2, para. 148.

¹³ Based on the estimates before the twentieth session of the Committee on Budget and Finance, in April 2013, the annual budget of the Court would have increased by €3.3 million in 2014 and by €13.5 million in 2015, should the unification of the projects not have taken place.

¹⁴ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.1, annex III, paras. 3(c) and 16 (c).

¹⁵ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.1, annex IV, para. 2.

¹⁶ *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. II, part B.2, paras. 145-147.

Considering that States Parties would benefit from information on their anticipated final contributions, as they will be recalculated at project end and that, in that regard, regular updates based on the current membership and on the latest scale of assessment would increase transparency about any shortfall or refund in their required contributions,

Total Cost of Ownership

Recalling that the total cost of ownership, currently estimated at €9.0 million in 2015, €12.1 million in 2016, and €12.9 as from 2017, includes: financial costs for those States not having opted for one-time payments, operating and maintenance costs of the premises, and funding costs for capital replacements,

Noting the recommendation of the Committee on Budget and Finance at its eighteenth session that the Oversight Committee develop, in cooperation with the Project Director, qualitative and quantitative assumptions, options and scenarios, including risk assessments and illustration concerning the total cost of ownership,¹⁷ and that such review should include the full range of possible approaches,

Considering the ongoing activity of the Working Group on Total Cost of Ownership established by the Oversight Committee and headed by the Project Director,

Taking note that costs related to the permanent premises can also be funded making use of any available surplus and that the Oversight Committee, in consultation with the Court, submitted to the Committee on Budget and Finance at its twenty-first session a proposed amendment to the Financial Regulations and Rules,

One time payments

Recalling that States Parties had been requested to inform the Registrar of their final decision to select the option of a one-time payment of their assessed share in the project by 15 October 2009, and that this deadline was first extended to 15 October 2012,¹⁸ and further extended to 31 December 2014,¹⁹

Welcoming the fact that since this latter extension 13 additional States Parties have committed to making a one-time payment, for a total of additional €10.4 million, bringing the total number of States Parties having so committed to 46, as at 31 October 2013, in a total amount of €46.8 million, of which €39.9 million have already been received,

Noting the advantages for all States Parties of allowing maximum flexibility to the one-time payment scheme, including by extending the deadline to opt for full or partial one-time payments due to the lesser need to draw funds from the host State loan, the immediate discount for those States opting for a one-time payment, and the lower capital and interest to be repaid by those States not opting for a one-time payment,

Considering that it will remain for the Oversight Committee to ensure that such flexibility is implemented throughout the project so that the ultimate objective of maximizing the benefits of the one-time payment scheme for all States Parties, while ensuring that the objective that the system remains fair is achieved,

Recalling the criteria applicable to the agreement on the host State loan, and the principles for one-time payments of the assessed share, contained in annexes II and III to resolution ICC-ASP/7/Res.1, respectively, and as further explained in resolution ICC-ASP/11/Res. 3, annex II and appendices I and II,

Noting that the conditions of the host State loan provide that payment of interests begins as of the time of the first utilization of the loan,²⁰ and that repayment of capital and interests will commence after expiration of the existing or future leases of the interim premises,²¹

¹⁷ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part B.1.

¹⁸ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part III, ICC-ASP/8/Res.8

¹⁹ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. I, part III, ICC-ASP/11/Res.3. para. 14.

²⁰ *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III, ICC-ASP/7/Res.1, annex II, (e).

²¹ *Ibid.*, (f).

Also noting that the necessary liquidity for the payment of interests and capital for the whole of the repayment period needs to be ensured, and that States Parties failing to timely making their contributions in that regard will be liable for any costs incurred by the Court's resources to meet the reimbursement obligation to the loan,

Recalling that the trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and that voluntary contributions can also be provided through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee,

I. Governance and Management of the Project

A. Construction Project

1. *Welcomes* the report of the Oversight Committee and *expresses its appreciation* to the Oversight Committee, the Project Director, the Court and the host State for the progress made on the permanent premises project since the eleventh session of the Assembly;
2. *Approves* the revised cash-flow scheme contained in annex I;
3. *Welcomes* the beginning, on March 2013, of the actual construction of the project, and the holding of a ground-breaking ceremony hosted by the Oversight Committee on 16 April 2013;
4. *Also welcomes* the continued commitment of the host State to fulfil its obligations under the ground lease and, in that regard, acknowledges the reimbursement to the project of the full cost of the cleaning for the soil pollution, and of the acceleration cost for recovering the delay caused by it;
5. *Further welcomes* that the construction project continues to remain within the originally approved budget of €190 million at 2014 prices, and, in this regard, *notes with satisfaction* that savings of €6.3 million have been realized on construction costs;
6. *Welcomes* the decision of the Oversight Committee to invest €0.7 million of these savings by approving a change in the design in order to increase the flexible use of the permanent premises also in terms of conference facilities, including for the purposes of holding, from 2016 onwards and should the Assembly of States Parties so decide, any of its meetings at the seat of the Court;
7. *Also welcomes* that, as a consequence, at the present stage the projected construction costs are now estimated at €184.4 million, i.e. €5.6 million below the originally approved budget;
8. *Further welcomes* the ongoing implementation of the cost-review strategy put in place by the Oversight Committee to ensure that the project continues to allow for good quality premises while avoiding elements that might not meet the necessary standard of coherence with the core functions of the Court or that would otherwise negatively affect the total cost of ownership;
9. *Emphasizes* the importance of strict control of design, scope and requirement changes during the project's construction phase in order to ensure that the project is delivered to cost, quality and on time, and *reiterates its request* that the Oversight Committee ensure that any changes during the construction stage and until completion of the project be only approved on a cost neutral basis and, to this end, *requests* the Project Director to make every effort so that any new change to the project that might be needed is offset by a corresponding capital or operational saving and can be implemented, wherever possible, with due regard to the minimization of additional costs related to delays and other factors;
10. *Welcomes* the report of the Oversight Committee on the status of consideration of the possible approaches for addressing the governance and financing of the long-term capital replacement costs, carried out in the Working Group headed by the Project Director, and *requests* the Committee to report thereon at the thirteenth session of the Assembly;

B. Transition Project

11. *Requests* the Oversight Committee and the Court to ensure through the Project Director that all preparatory measures are adopted for the Court to be ready to take occupation of the permanent premises by not later than December 2015 in order to avoid any additional expenditures for the States Parties, and to report thereon in detail to the Bureau and to the Committee on Budget and Finance;

12. *Endorses* the decision of the Oversight Committee that the approval of transition costs for the lifetime of the project and within a multi-year budget requires that a prior meaningful review of such costs be conducted against the assets needs and procurement policies of the Court,²² and that such review is aimed at achieving savings throughout the life-span of the project, with the view of reducing the overall project financial target by June 2014, and *requests* the Project Director to report thereon in detail to the thirteenth session of the Assembly of States Parties through the Oversight Committee;

13. *Also requests* the Oversight Committee and the Court to ensure through the Project Director that a meaningful review process of the transition elements is conducted taking into account any new options for achieving savings, including but not limited to a review of the user requirements, as well as the suitability and extended use of existing equipment to be conducted against: (i) the complete inventories of the Court's assets, including their value and status; (ii) the short and medium-term procurement plans, including opportunities for joint procurement; and (iii) an extension of the useful life of assets;

C. Unified Project

14. *Welcomes* the unified approach to the permanent premises and *requests* the Committee, in consultation with the Court, to ensure that the implementation of the governance structure²³ remains consistent with the Rome Statute and with resolution ICC-ASP/6/Res. 1, and that such structure is kept under review;

15. *Approves* the establishment of a cost envelope which represents the unified financial target for the overall project, at the level of €195.7 million, including €11.3 million for transition costs, subject to a review of such target every six months throughout the life-span of the project, and also subject to a cost review process of the transition elements of the project, aimed at reducing the target at least to the level of €193.7 million by June 2014;

16. *Also approves* that, in the period 2014 to 2016, transition costs of up to €11.3 million and subject to the ongoing cost review, will be funded through savings of €5.6 million realized in the construction budget and, for the remaining part of up to €5.7 million, with the appropriation of the surplus pertaining to the financial years 2012 to 2014, to be accounted for as one-time payments;

17. *Further approves* that cash advances to the project budget may be made from the cash reserves of the Court in the period 2014 to 2016, in order to meet any cash needs prior to the availability of the surplus pertaining to the financial years 2012 to 2014, as a temporary and prudent measure of last resort, for a limited amount, and with an agreed schedule for restitution;

18. *Requests* that the Project Director reports separately on expenditures for the construction and transition activities, at the end of the project;²⁴

19. *Adopts* the amendment to the Financial Regulations and Rules as laid down in annex II;

20. *Approves* appropriations for an amount equal to the 2012 surplus, currently estimated at €2.5 million, for funding the overall project budget;

²² *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. II, part B.2, para. 149. See *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. I, part III, ICC-ASP/12/Res.2, para. 8.

²³ See *Review of governance*, as set out in annex I to the *Report on the activities of the Oversight Committee*, ICC-ASP/12/43.

²⁴ *Official Records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. II, part B.2, para. 148.

21. *Authorizes* the Court to ensure that the necessary liquidity is available for the repayment of the host State loan, for the interests for 2013, payable as of 1 February 2014, in case of any States Parties' delay in the payment of their assessed share of contributions;

22. *Further authorizes* the Court to provide an assessment in the 2014 contributions letter of the estimated host State loan interest incurred in 2014 (payable by the Court on 1 February 2015) and requesting the relevant States Parties to pay their full amount by no later than 25 January 2015;

23. *Requests* that the Court and the Oversight Committee, in conjunction with the Project Director and through the Committee on Budget and Finance, consider in detail the long-term mechanism for the annual repayment of the host State loan, for the assessment of relevant States Parties' contributions, and for minimizing the risk of delay in receipt of such contributions, and report thereon to the thirteenth session of the Assembly with the view of adopting this mechanism;

24. *Welcomes* that contributions of States Parties against the project costs are kept regularly updated by the Project Director on the basis of the expected final cost of the unified project and the latest scale of assessment;

II. One-time payments

25. *Requests* States Parties electing by 31 December 2014 the option of a full or partial one-time payment of their assessed share in the project to consult with the Project Director so as to determine the scheduling thereof, taking into account that said one-time payments:²⁵

- a) May be made in one or more annual instalments;
- b) Are to be received in full by no later than 15 June 2015 or on any earlier date dependent on the expected cash-flow; and
- c) Shall be subject to an adjustment once the final cost of the project and the full amount of the host State subsidy are known in order to ensure that all States Parties receive a fair and equal treatment;

26. *Decides* that States Parties having opted for a one-time payment and not fulfilling this option, entirely or partly, within the agreed timeline will automatically forfeit the opportunity of making a one-time payment for any unpaid amount;

27. *Requests* the Registrar, in coordination with the Project Director's Office, to continue to submit to the Oversight Committee, as requested, updated information on the agreed schedules for one-time payments;

III. Financial reporting

28. *Requests* the Project Director, in consultation with the Oversight Committee, in accordance with resolution ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the unified project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;

29. *Further requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;

²⁵ See *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. I, part III, ICC-ASP/11/Res.3, annex II, Explanatory note on one-time payments, which clarifies the principles for one-time payments in connection with the criteria applicable to the loan agreement, including as regards those States Parties that would select the one-time payment option, or make their payments after the host State loan has been accessed and payment of interest has commenced.

IV. Audit strategy

30. *Welcomes* that the External Auditor of the Court (*Cour des comptes*) has adopted a comprehensive approach to auditing the accounts and performances of the Court, which includes the full scope of the permanent premises project;²⁶

V. Voluntary contributions

31. *Welcomes with appreciation* that three States Parties have initiated discussions with the Project Director and the Oversight Committee regarding proposals for contributing funds to enhance the specific quality of areas within the new premises and/or in the donation of works of art for integration into the permanent premises, and *calls on* States Parties to approach the Oversight Committee at the earliest opportunity if they wish to contribute in that regard to ensure integration into the new building as it is completed;

32. *Requests* the Oversight Committee to finalize, with the assistance of the Project Director and in consultation with the Court, a strategy for donations and to report thereon to the twenty-second session of the Committee on Budget and Finance and to the thirteenth session of the Assembly of States Parties;

33. *Reiterates* the invitation to States Parties and members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

VI. Renewal of membership of the Oversight Committee

34. *Endorses* the recommendation of the Bureau, in accordance with ICC-ASP/6/Res.1, annex II, that the membership of the Oversight Committee, for the next term 2014 - 2015, be comprised of those States referred to in annex III to this resolution;

VII. Future reporting by the Oversight Committee

35. *Requests* the Oversight Committee to continue to provide regular progress reports to the Bureau and to report back to the Assembly at its next session.

²⁶ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 82.

Annex I

Cash-flow scheme

Items	Total costs	Overall total	2009	2010	2011	2012	2013	2014	2015	2016	Total
			PD ^(*)	FD ^(**)	FD +tendering	Construction and transition					
1. Construction Costs		156.8				2.9	40.5	95.0	18.4	-	156.8
1a. Construction costs	150.4					1.9	37.6	93.0	17.9		150.4
1b. Fees design team (after tendering)	6.4					1.0	2.9	2.0	0.5		6.4
2. Risks		7.5					3.0	2.5	1.5	0.5	7.5
2a. Project risk (all issues incl. design or third parties)	2.1						1.0	0.5	0.5	0.1	2.1
2b. Client risk (outside project e.g. municipality)	5.4						2.0	2.0	1.0	0.4	5.4
3. Permit and dues		2.7				2.5	-	-	0.2	-	2.7
3a. Permits and dues	2.7					2.5			0.2		2.7
4. Fees		23.9	1.3	3.6	6.8	3.2	2.6	2.4	3.7	0.4	23.9
4a. Design related	10.6			2.7	5.1	2.4	0.1	0.3			10.6
4b. Project management	8.9		0.9	0.7	1.3	0.4	1.9	1.5	1.9	0.3	8.9
4c. Other consultants	4.3		0.4	0.2	0.4	0.3	0.5	0.6	1.8	0.1	4.3
4d. Operational fees (e.g. bank fees)	0.1					0.1	0.1				0.1
5. Other costs		1.5		1.5							1.5
5a. Other costs	1.5			1.5							1.5
6. Equipment		3.3							3.2	0.1	3.3
6a. Equipment	3.3								3.2	0.1	3.3
Residue (projected underspend/ additional reserve)											
Total	195.7	195.7	1.3	5.1	6.8	8.6	46.1	99.9	27.0	1.0	195.7
Cumulative			1.3	6.4	13.2	21.8	67.8	167.7	194.7	195.7	

Note: The above figures are estimates only and subject to change.

(*) PD: preliminary design stage.

(**) FD: final design stage.

Annex II

Amendment to the Financial Regulations and Rules

Use of surplus

Regulation 4.7 establishes the right of States Parties to have the surplus returned in proportion of their share of the funding of the expenses of the Court at the time of their contribution. The exception is limited to the possible funding of the Contingency Fund through the surplus, pursuant to regulation 6.6. The rationale of such exception is the same as the one applicable to the limitation of the right of States Parties to have their share of surplus returned: the obligation to fund the regular budget of the Court and its Contingency Fund. The proposed amendment is based on the same rationale. The payment of the expenditures for the Permanent Premises is not discretionary for States Parties, both for the Project (construction and transition costs) and for the future Total Cost of Ownership. Hence, it is proposed that the surplus can be allocated by the Assembly to funding both the transition costs and the future capital replacement and maintenance costs (construction costs do not need any funding, as they remain below the approved budget).

It is proposed that regulation 4.7 should be amended as follows (changes in *italics*):

“Subject to financial regulation 6.6, last paragraph, *or to a decision by the Assembly of States Parties for the funding of costs related to the permanent premises of the Court*, any cash surplus in the budget of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates”.

Annex III

Members of the Oversight Committee¹

African States

1. Kenya

Asian and Pacific States

2. Japan
3. Republic of Korea

Eastern European States

4. Romania

Group of Latin American and Caribbean States

5. Argentina
6. Venezuela (Bolivarian Republic of)

Western European and Other States

7. Germany
8. Ireland
9. Italy
10. United Kingdom

¹ As of 21 December 2013.