

Resolution ICC-ASP/13/Res.2

Adopted at the 12th plenary meeting, on 17 December 2014, by consensus

ICC-ASP/13/Res.2

Resolution on 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 ICC-ASP/11/Res.3,⁷ and ICC-ASP/12/Res.2⁸ 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,

Noting the recommendations of the External Auditor, as well as the reports of the Committee on Budget and Finance on the work of its twenty-second and twenty-third sessions and the recommendations contained therein,

Stressing its firm intention that the unified construction and transition projects for the permanent premises should be delivered within the €195.7 million budget (at 2014 price levels) as per resolution ICC-ASP/12/Res.2, 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,

Noting the existing pressure on the strategic reserve of the project, as a result of reductions on other reserves made before 2013,

Also noting that financial security needs to be built into the approved budget envelope to prevent a potential overrun in the budget during 2015, which could have a detrimental effect on the timely completion of the project and result in additional costs if the Court is unable to move into the new premises,

Recalling, that the Oversight Committee and the Registrar have decided to cooperate in a spirit of mutual trust and collaboration to ensure the unified project's success,

Recalling 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 December 2015,

Also recalling-that the permanent premises shall be delivered within the approved budget at a good quality standard, 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,

Noting the desire of States Parties that the permanent premises adequately reflect the role of the Assembly in the governance of the Rome Statute system and, hence, that delegations' interests are taken into account,

Financial target 2014-2016

Noting that, while to date costs remain within the unified project budget set by the Assembly at €195.7 million, current pressures on budget exist, and that measures are needed to give financial security to the project in case of a cost overrun that would

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 ... Eighth session (resumption) ... 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 *Official records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. I, part II.

otherwise put at risk the timely completion of the construction and transition of the Court into its new premises,

Total Cost of Ownership

Recalling that the total cost of ownership, as currently estimated, would amount to €5.7 million in 2016 and includes: financial costs for those States not having opted for one-time payments, operating and maintenance costs of the premises,

Considering that the Oversight Committee has indicated that its Working Group on Total Cost of Ownership, headed by the Project Director, should develop two alternative solutions: the first reflecting a consolidated option of a multiannual approach, which appears most advantageous from a technical perspective, and, the second, a mostly annual approach where political challenges would be addressed,

Noting that the Oversight Committee intends to finalize its work on the Total Cost of Ownership early in 2015 so that, upon advice from the twenty-fourth session of the Committee on Budget and Finance, a recommendation can be submitted to the fourteenth session of the Assembly for a decision,

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 2012,⁹ and further extended to 31 December 2014,¹⁰

Welcoming the fact that since the twelfth session of the Assembly, 13 additional States Parties have committed to making a one-time payment, for a total of additional €9.1 million, bringing the total number of States Parties having so committed to 59, as at 15 November 2014, in a total amount of €69.7 million, of which €54.4 million have already been received,

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 appendixes I and II,

Noting that the conditions of the host State loan provide that payment of interest begins as of the time of the first utilization of the loan,¹¹ and that repayment of capital and interest will commence after expiration of the existing or future leases of the interim premises,¹²

Also noting the that necessary liquidity for the payment of interest and capital for the whole of the repayment period needs to be ensured, and that States Parties failing to make their contributions in a timely manner will be liable for any costs incurred to meet the reimbursement obligation of the loan, and that an appropriate financial solution has to be established to address this risk,

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

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 unified project since the twelfth session of the Assembly;

⁹ Resolution ICC-ASP/8/Res.8.

¹⁰ Resolution ICC-ASP/11/Res.3, para. 14.

¹¹ Resolution ICC-ASP/7/Res.1, annex II, (e).

¹² *Ibid.*, (f).

encourages members and observers to continue working efficiently together in the Committee with maximum mutual transparency, as much as possible in open meetings, to achieve the successful completion of the unified project;

A. Construction Project

2. *Approves* the revised cash-flow scheme contained in the annex;
3. *Welcomes*:
 - (a) That the project is within its timelines, and that the premises are expected to be completed and ready for occupation by the Court as from September 2015, with costs currently within the overall financial envelope of a maximum of €195.7 million, including both the construction budget of €184.4 million and the transition budget of €11.3 million;
 - (b) That the period between September and December 2015 would still be fully available for the Court to complete its transition from the interim to the permanent premises, and that the actual move of the Court will take place in December 2015;
 - (c) The absorption of the Court's potential growth in the capacity of the permanent premises, based on the new existing floor plans approved by the three organs of the Court, as well as that the Court consider other possible ways to utilize the space more efficiently; and
 - (d) The ongoing implementation of the cost-review strategy put in place by the Oversight Committee as well as the cost reduction process enacted by the Project Director through identifying possible savings in the look ahead register ensures 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;
4. *Invites* the Oversight Committee to submit to the twenty-fourth session of the Committee on Budget and Finance the outcome of the analysis conducted in the Working Group on the Total Cost of Ownership, with the view to submitting to the fourteenth session of the Assembly any recommendations of the Oversight Committee;¹³
5. *Emphasizes* the importance of strict control of design, scope and requirements 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 minimisation of additional costs related to delays and other factors;
6. *Underscores* that a continuous prudent financial strategy requires a sufficient financial security to remain available to cater for unforeseen risks until the project end, due to the growth in the use of the resources available in the strategic reserve since March 2014;

B. Transition Project

7. *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 no later than December 2015 in order to avoid any additional expenditure for States Parties, and to report thereon in detail to the Bureau and to the Committee on Budget and Finance;
8. *Takes note* that all budget elements have been further reviewed in 2014 and that, where further savings were identified, these have been taken up by pressures in other

¹³ *Official Records ... Thirteenth session ... 2014* (ICC-ASP/13/20), vol. II, part B.1, paras. 91 to 101.

budget lines, and *also takes note* that the Project Director and the Court have indicated that they could not find room for additional savings in the transition budget;

9. *Encourages* the Oversight Committee and the Court to ensure through the Project Director that a meaningful review process of the transition elements is continued effectively and implemented taking into account any new options for achieving savings, including but not limited to a review of the user requirements and consideration of the Court's assets;

10. *Recalls* its objective that costs related to the transition project remain as low as possible in order to stay within, and, if possible, below the approved €11.3 million budget;

11. *Also recalls* that the €11.3 million budget for the transition project does not include an amount for any risks or unforeseen costs, which according to the decision to unify the construction and the transition projects, would need to be funded through the unified project reserve, if they materialize;

12. *Further recalls* its decision to fund transition costs 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, and that an amount of €4.4 million has been funded in 2014 with the surplus pertaining to 2012;

13. *Authorizes* the Court, in consultation with the Project Director, to extend the application of the guidelines on contracts and expenditures for the construction project, approved by resolution ICC-ASP/11/Res.3, paragraph 12, to the procurement processes to be conducted in the course of the Transition Project, in order to avoid any undue delays in the execution of the project and in the completion and occupation of the permanent premises;

14. *Authorizes* the Court to extend the maintenance contracts provided by the General Contractor during the first year after the delivery of the permanent premises, to a period ending on 31 December 2017, in order to allow the Court sufficient time to prepare its future long term maintenance strategy and contracts;

C. Unified Project

15. *Recalls* that the total estimated costs, following the 2013 decision of the Committee to unify the construction and transition projects, amount to €203.7 million, composed of €195.72 million for the unified revised project budget which includes all construction and transition activities and an estimated figure of €8 million from the regular annual budgets of the Court;¹⁴

16. *Requests* the Oversight Committee and the Project Director to ensure that every effort is made to mitigate risks, seek opportunities for additional savings, and deliver the project within its current envelope of €195.7 million;

17. *Approves* that, in addition to the mandate established under resolution ICC-ASP/6/Res.1, the Oversight Committee shall have the authority delegated by the Assembly to make decisions, as a measure of last resort and as necessary and appropriate, for any increases of the project budget up to €4.3 million in 2015, thus bringing the budget authorisation from €195.7 million up to a maximum of €200 million, to ensure the financial security of the project;

18. *Invites* the Oversight Committee to continue implementing a strict control on expenditures by means of the appropriate procedure for the management and control, within the strategic reserve of the project, of any budget increases it might approve;

19. *Reiterates* that the surplus pertaining to the financial period 2013 shall be allocated to funding the remaining transition costs up to €1.3 million, to be accounted for as one-time payments;

20. *Takes note* of the recommendation of the External Auditor and the Committee on Budget and Finance, according to which the liquidation of States Parties' contributions for

¹⁴ Idem, para. 22.

the permanent premises project be based on the scale of assessments applicable for 2013-2015;¹⁵

II. One-time payments

21. *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:¹⁶

- (a) May be made in one or more instalments;
- (b) Are to be received in full by no later than 15 June 2015 or on any earlier date dependant 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;

22. *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

23. *Requests* the Project Director to submit at the project end, through the Oversight Committee, and for consideration by the Assembly at its fourteenth session, a detailed and separate report on expenditures for the construction and transition activities¹⁷, together with the financial statements for the project;

IV. Audit strategy

24. *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,¹⁸ and *also welcomes* the recommendations contained in the Financial statements for the period 1 January to 31 December 2013;¹⁹

V. Voluntary contributions

25. *Welcomes with appreciation* that four States Parties have initiated discussions with the Project Director and the Oversight Committee regarding proposals for donations 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;

26. *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 fourteenth session of the Assembly of States Parties;

27. *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;

¹⁵ ICC-ASP/12/15, para. 164.

¹⁶ See resolution ICC-ASP/11/Res.3, annex II, Explanatory note on one-time payments, that clarifies the principles for to one-time payments in connexion with the criteria applicable to the agreement on the loan, 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.

¹⁷ ICC-ASP/12/15, para. 148.

¹⁸ *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 82.

¹⁹ ICC-ASP/13/12.

VI. Ownership of the Permanent Premises

28. *Requests* the Oversight Committee and the Court to ensure that the interests of States Parties are addressed in matters related to the access to the premises;

29. *Also requests* the Oversight Committee to submit to the Assembly to its fourteenth session a proposal for States Parties representation of the ownership interests of the Assembly in the permanent premises;

VII. Future reporting by the Oversight Committee

30. *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.

Annex

Cash-flow scheme

<i>Items</i>	<i>Total costs</i>	<i>Overall total</i>	2009-2012	2013	2014	2015	2016	<i>Total</i>
			<i>Construction and transition</i>					
1. Construction Costs		172.0	4.4	36.5	87.3	42.2	1.6	172.0
2. Risks/Reserve		-7.5	-1.5	-1.1	-2.6	-2.3	-	-7.5
3. Permit and dues	2.6		2.5	-	-	0.1	-	2.6
4. Fees		23.8	14.9	3.1	1.1	4.2	0.5	23.8
5. Other costs		1.5	1.5	-	-	-	-	1.5
6. Equipment		3.3				3.2	0.1	3.3
Total	195.7	195.7	21.8	38.5	85.8	47.4	2.2	195.7
Cumulative			21.8	60.3	146.1	193.5	195.7	

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