

Resolution ICC-ASP/15/Res.2

Adopted at the 10th plenary meeting, on 24 November 2016, by consensus

ICC-ASP/15/Res.2 Resolution on permanent premises

The Assembly of States Parties,

Recalling its resolutions adopted with regard to the permanent premises,¹ 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,²

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-sixth and twenty-seventh sessions, and the recommendations contained therein,³

Welcoming the cooperation between the Oversight Committee and the Registrar in a spirit of mutual trust, collaboration and desire to ensure the unified project's success,

Noting that the permanent premises project was completed on 2 November 2015, that the move from the interim premises was completed on 11 December 2015, and that the objective for the Court to be fully operational starting 1 January 2016 was achieved,

Also noting that the official opening ceremony of the permanent premises took place on 19 April 2016,

Also recalling that the permanent premises were delivered 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, and that any overruns from approved costs were characterized by the External Auditor as minor by reference to the overruns commonly observed in construction projects of this size,⁴

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, consequently, that States Parties' interests are fully taken into account in the future governance and management of the premises,

I. Governance and Management of the Project

1. *Welcomes* the report of the Oversight Committee and, while the project was not free from difficulties, including unexpected cost overruns, *expresses* its appreciation to the Oversight Committee, States Parties who served as members of the Oversight Committee since its establishment in 2007, the Project Director's Office, the Court and the host State for the successful completion of the permanent premises unified project;

A. Construction Project

2. *Approves* the revised cash-flow scheme contained in annex I;

3. *Welcomes*:

(a) That the project has been completed, and that the Court has taken occupation of the premises as from 2 November 2015, with costs within the overall financial cost of a maximum €205.75 million;

(b) That the actual move of the Court was completed on 11 December 2015;

¹ ICC-ASP/6/Res.1, ICC-ASP/7/Res.1, ICC-ASP/8/Res.5, ICC-ASP/8/Res.8, ICC-ASP/9/Res.1, ICC-ASP/10/Res.6, ICC-ASP/11/Res.3, ICC-ASP/12/Res.2, ICC-ASP/13/Res.2, ICC-ASP/13/Res.6., and ICC-ASP/14/Res.5.

² ICC-ASP/15/17.

³ *Official records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.

⁴ ICC-ASP/15/4, para. 125.

4. *Takes note* that the final costs would be known on 7 December 2016;

B. Transition Project

5. *Welcomes* that costs related to the transition project remained below the approved €11.3 million budget;

C. Unified Project

6. *Notes* that the total estimated costs (level of expected expenditures) amounted to €205.75 million for the unified project, and an estimated figure of €7,544,600 from the regular annual budgets of the Court for the management of the project;⁵

7. *Recalls* that the unified project budget was the result of subsequent decisions taken in 2013 (budget unification, at €195.7 million), in 2014 (delegated authority to the Committee, to increase budget up to €200 million) and in 2015 (increase up to €206 million, with expected expenditure level of €204 million);

8. *Welcomes* that the Oversight Committee has implemented a close scrutiny of all pending contracts, and a prudent policy of maintaining existing savings in the transition project as a reserve of last resort, which would contribute to mitigating the risk of a cost overrun in the unified project, and, *also welcomes* the work of the Project Director's Office and of the Court to achieve the best results and cost effectiveness in the procurement process and in addressing compensation events with the general contractor;

II. Capacity of the premises

9. *Acknowledges* that the capacity of the premises under the finalized construction allows for 1,382 workstations, with a theoretical capacity up to 1,519 workstations, should all individual offices be converted into shared offices, and meeting room space reduced drastically to accommodate extra office space;

10. *Mindful* that the permanent premises will have to accommodate the Court in the long-term;

11. *Recalls* that the Court has provided a scenario of the effects that its growth strategies, in the short to mid-term, could have on the capacity of the premises;⁶

12. *Requests* the Court to consider the permanent premises as a fixed factor of its growth strategies and, in that regard, to ensure that any request for approval of future increases in its staff level is also reasoned against the capacity of the premises and the specific solutions found to accommodate human resources;

III. Financing of the project

A. Funding needs

13. *Notes* that the total funding needs of the unified project amount to €205.75 million, as a result of the decisions taken by the Assembly in 2013 (€1.3 million), in 2014 (€4.3 million), in 2015 (€4.0 million);

14. *Further notes* the draft agreement between the Project Director and the general contractor (*Courtys*) to settle outstanding financial issues, which would exceed the budget envelope authorized by the Assembly by €1.75 million, and *authorizes* an increase of the unified budget envelope in the amount of €1.75 million, bringing the total project budget to €205.75 million;

⁵ ICC-ASP/15/17, annex III.

⁶ ICC-ASP/15/33 and ICC-ASP/15/34.

15. *Decides* that the amount of €1,750,000, which represents the cost overrun of the permanent premises should be covered by the interest accrued over the years on the funds of the permanent premises project and any surplus from unspent resources which exists under the major programmes of the Court's regular budget in 2016;

B. Final cost, audit and deadlines

16. *Notes* that, while the project has been completed by 2 November 2015, its final cost is only expected to be known once the final accounts with the general contractor are closed, which depends on the approval by the Assembly of the financing of the cost overrun of €1.75 million which will permit final settlement with the general contractor;

17. *Takes note* of the Audit report on the cash reserves⁷ and Audit report on the budget performance of the permanent premises project;⁸

C. One-time payments

18. *Welcomes* the important contribution of 62 States Parties that made one-time payments to a value of €94,568,303, which have allowed the project to be self-financed to a large extent;

19. *Notes* the total of €1,849,015 in overpayments, *decides* that the overpayment of States Parties which made a one-time contribution for the permanent premises of the Court shall be deducted from the assessed contributions due by the same States to the regular budget of the Court and/or to the replenishment of Working Capital Fund and Contingency Fund, as per their respective direction;

20. *Also notes* that interest accrued over the years on the funds of the permanent premises project amounts to €553,326 and in this respect that the States Parties, which made a one-time payment, accept the recommendation made by the Committee on Budget and Finance that the interest accrued on their one-time payments in the project account be used to finance part of the cost overrun;⁹

21. *Recalls* the agreement on the host State loan ("Loan Agreement"), and the resolutions adopted by the Assembly of States Parties on the matter;

22. *Welcomes* the host State contribution to bridge the financial gap up to €3.5 million, as a political solution, with an additional contribution;

23. *Notes* 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,¹⁰ and that repayment of capital and interest commenced on 1 July 2016;¹¹

24. *Also notes* that the 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;

IV. Financial reporting

25. *Welcomes* the submission by the Project Director, through the Oversight Committee, and for consideration by the Assembly at its fifteenth session, of a detailed and separate report on expenditures for the construction and transition activities,¹² together with the financial statements for the project;

⁷ ICC-ASP/14/44.

⁸ ICC-ASP/15/4.

⁹ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.2, para. 236.

¹⁰ Resolution ICC-ASP/7/Res.1, annex II, (e).

¹¹ *Ibid.*, (f).

¹² ICC-ASP/15/17, section V, and annexes I-V.

V. Audit strategy

26. *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, and *takes note* of the recommendations contained in the Financial statements for the period 1 January to 31 December 2015;¹³

VI. Ownership of the Permanent Premises

A. Ownership interests

27. *Recalls* its request that the Oversight Committee and the Court ensure that the interests of States Parties are addressed in matters related to the access to the premises;

B. New States Parties contributions

28. *Mindful* that the Court is provided with permanent premises whose costs are equally contributed by all States Parties, and that the principle of equal sovereignty of States requires that such situation remains unaltered in future, so as to avoid that future States Parties benefit from an asset to which they might have not contributed;

29. *Acknowledges* that the decision to accede to the Rome Statute would not be driven by the cost future States Parties might have to share with current ones to take on their membership responsibilities;

30. *Recalls* its decision that new States Parties, at the time of their accession to the Rome Statute, shall be assessed contributions against the total cost of the permanent premises;¹⁴

C. Governance structure

31. *Notes* that the Oversight Committee has concluded its mandate;¹⁵

32. *Stresses* the need to ensure sufficient and continuous oversight by the States Parties on the permanent premises in which they have invested significant financial resources;

33. *Considers* that a decision by the Assembly is required at this stage to enable that the premises start to be used under the clear and unequivocal policy guidance necessary to establish the correct management framework and relationship between States Parties and the Court, as well as to continue preparations for the asset value to rely on reasonable financing expectations, and *welcomes* the contribution of the Oversight Committee to the consideration thereof;¹⁶

VII. Total Cost of Ownership

34. *Stresses* that the ownership responsibility of States Parties for the permanent premises include the preservation of the asset value at an appropriate functional level throughout its lifetime, and that capital replacement actions need to be planned and funded within a structured framework, in a political and financial sustainable context;

35. *Notes* the work undertaken by the Oversight Committee on the Total Cost of Ownership¹⁷ and, upon advice of the Committee on Budget and Finance at its twenty-seventh session¹⁸ and *considers* that the Oversight Committee has reviewed the conclusions of its working group on Total Cost of Ownership, headed by the Project Director, which

¹³ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part C.1.

¹⁴ ICC-ASP/14/Res.5, annex IV.

¹⁵ See decision of the Bureau from 15 November 2016.

¹⁶ The proposal of the Oversight Committee to the Bureau is contained in annex II of this resolution.

¹⁷ ICC-ASP/14/Res.5, annex II.

¹⁸ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.2.

recommended a multiannual approach, which appears most advantageous from a technical perspective, whereby long-term maintenance and capital replacement would be organized through a Main Contractor;

36. *Recalls* its authorization for 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;¹⁹

37. *Acknowledges* that the following costs will be included in the annual budgets of the Court:

- (a) Operational costs, including utilities, cleaning and staff costs;
- (b) Services needed for running the premises (e.g., occasional conversion of Courtroom 1 for Assembly of States Parties purposes);
- (c) Other Facility Management Costs;²⁰

38. *Welcomes with appreciation* that several States Parties made artwork donations to the permanent premises;

VIII. Governance responsibilities

39. *Adopts* the current resolution and the annexes thereto.

Annex I

Cash flow projection per 15 October 2016

	<i>Disbursement as at 15.10.2016</i>	<i>Oct-16 Forecast</i>	<i>Nov-16 Forecast</i>	<i>Dec-16 Forecast</i>	<i>Sep-17 Forecast</i>	<i>Total</i>
Disbursement	-203,648,360	-61,608	-182,832	-1,750,000	-107,200	-205,750,000
Court funding	9,180,591	61,608	182,832	1,750,000	107,200	11,282,231

¹⁹ ICC-ASP/13/Res.2, para. 14.

²⁰ The proposal of the Oversight Committee to the Bureau is contained in annex II of this resolution.

Annex II

Proposals to the Bureau on the total cost of ownership and governance structure

Elements for a non-paper on the future governance structure

A. Preamble

1. In resolution ICC-ASP/14/Res.5, the Bureau was invited “to continue discussions on the establishment of a new governance structure for the permanent premises, and to report thereon to the fifteenth session of the Assembly;” Furthermore, the Assembly also agreed that if no decision is taken on the establishment of a new governance structure by the end of the fifteenth session of the Assembly, the mandate of the Oversight Committee shall be extended until such time such decision is taken.

2. Members of the Oversight Committee have not formally expressed desire for the Committee to continue its existence beyond 2016 since it would have concluded the mandate for which it was established. Furthermore, the Committee understands that the Project Director’s Office will cease to exist as of 15 December 2016.

3. The Oversight Committee on the permanent premises, as a subsidiary body of the Assembly which has been entrusted since its establishment in 2007 with providing oversight on issues related to the premises, submits for consideration by the Bureau some recommendations thereon.

4. The recommendations, whose nature is not that of a decision of the Oversight Committee, but rather as elements for reflection by the Bureau members, are the result of written and oral contributions from members of the Oversight Committee, the Project Director’s Office, the External Auditor and discussions in the Committee which were held with the presence of other States Parties.

5. It is the understanding of the Oversight Committee that:

(a) Issues of the future governance of the permanent premises and the total cost of ownership were closely linked and thus should be considered together;

(b) The day-to-day maintenance responsibility for the premises should lie with the facilities manager, a position located within the Registry;

(c) A 50-year maintenance plan is not realistic in terms of foreseeability, nor can States Parties be expected to make decisions potentially committing their governments for financial contributions that far in the future; and

(d) States Parties wish to ensure that:

(i) The oversight role of the Assembly foreseen in article 112 of the Rome Statute, is implemented in the establishment and regular work of the future governance structure; and

(ii) The ownership interests of the Assembly and its States Parties are duly taken into account.

B. Substantive elements

1. Format

6. The future governance structure should not result in a new subsidiary body, but should rather rely on existing bodies within the Assembly. The Oversight Committee recommends that the Bureau be entrusted with the mandate set up below, via its Hague Working Group which has a facilitation on the budget, or, if necessary, a subcommittee thereof. Given the Bureau’s representative character the interests of States Parties regarding oversight would be ensured and in addition, the budget facilitation could make use of the

expertise of the Committee on Budget and Finance, as is already the case through the latter's review of financial matters undertaken during its two sessions throughout the year.

2. Scope/mandate

7. The Bureau's focus via The Hague Working Group could include consideration of:
 - (a) Issues relating to the long-term preservation, value and depreciation of the premises as a capital asset, which could include:
 - (i) A draft plan for funding the total cost of ownership and the subsequent submission of recommendations to the Assembly in this regard; and
 - (ii) A draft plan for monitoring the implementation of such a budget if the Assembly approves it;
 - (b) How to deal with strategic decisions that go beyond the annual budget cycle regarding:
 - (i) Multi-annual investment plans; and
 - (ii) Unforeseen events/emergencies that may negatively impact the Court's judicial functions;
 - (c) The Bureau could retain and receive outside technical expert advice on substantive proposals requiring extra-budgetary funding or investment. Such expertise would be funded out of the regular budget of the Court related to the maintenance and operations of the premises.