

**ASSEMBLY OF STATES PARTIES TO  
THE ROME STATUTE OF THE  
INTERNATIONAL CRIMINAL COURT**

**RESUMED THIRTEENTH SESSION  
THE HAGUE, 24-25 JUNE 2015**

**OFFICIAL RECORDS**

*Note*

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Decision”.

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## Part I Proceedings

### A. Introduction

1. In accordance with the decision of the Assembly of States Parties to the Rome Statute of the International Criminal Court (hereinafter “the Assembly”), taken at the thirteenth meeting of its thirteenth session, on 17 December 2014,<sup>1</sup> and the decision of the Bureau of the Assembly, taken at its first meeting, on 23 January 2015, the Assembly held the resumed thirteenth session at the Ministry of Foreign Affairs of the Netherlands from 24 to 25 June 2015.

2. In accordance with the Rules of Procedure of the Assembly (hereinafter “the Rules of Procedure”),<sup>2</sup> the President of the Assembly invited all States Parties to the Rome Statute to participate in the resumed thirteenth session. Other States which had signed the Statute or the Final Act were also invited to participate in the session as observers.

3. In accordance with rule 92 of the Rules of Procedure (hereinafter “the Rules of Procedure”), invitations to participate in the resumed session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions<sup>3</sup> as well as representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.

4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court or having consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Assembly, attended and participated in the work of the Assembly.

5. In addition, in accordance with rule 94 of the Rules of Procedure, the following States that had been invited during the thirteenth session to be present during the work of the Assembly, continued in that capacity at the resumed thirteenth session: Bhutan, Democratic People’s Republic of Korea, Equatorial Guinea, Lao People’s Democratic Republic, Lebanon, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, South Sudan, Swaziland, Tonga, Turkmenistan and Tuvalu.

6. The list of delegations to the resumed thirteenth session is contained in document ICC-ASP/13/INF.2.

7. The resumed thirteenth session was presided by the Vice-President of the Assembly, Amb. Álvaro Moerzinger (Uruguay) in place of President Sidiki Kaba who could not attend due to force majeure reasons.

8. The Bureau of the resumed thirteenth session continued as follows:

*President:*

Mr. Sidiki Kaba (Senegal)

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8-17 December 2014* (ICC-ASP/13/20), vol. I, part I, para. 69.

<sup>2</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.C.

<sup>3</sup> Resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53, 61/43, 61/259, 63/131, 63/132, 64/456, and decision 56/475.

*Vice-Presidents:*

Mr. Álvaro Moerzinger (Uruguay)  
Mr. Sebastiano Cardi (Italy)

*Rapporteur:*

Ms. Barbara Kremzar (Slovenia)

*Other members of the Bureau:*

Chile, Colombia, Costa Rica, Czech Republic, Germany, Ghana, Hungary, Japan, Netherlands, Nigeria, Republic of Korea, Romania, Samoa, South Africa, Sweden, Uganda and the United Kingdom.

9. The Credentials Committee, which served at the resumed thirteenth session, had the following membership:

Bosnia and Herzegovina, Chile, Côte d'Ivoire, Denmark, Estonia, Liechtenstein, Mali, Paraguay and Samoa.

10. The Director of the Secretariat of the Assembly, Mr. Renán Villacís, acted as Secretary of the Assembly. The Assembly was serviced by the Secretariat.

11. At its fourteenth plenary meeting, on 24 June 2015, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure of the Assembly.

12. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/13/43/Rev.1):

1. Adoption of the agenda.
2. States in arrears.
3. Credentials of representatives of States at the resumption of the thirteenth session.
4. Organization of work.
5. Election to fill a judicial vacancy.
6. Permanent premises of the International Criminal Court.
7. Other matters.

13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/13/43/Add.1). At its fourteenth meeting, the Assembly, on the recommendation of the Bureau, decided, pursuant to rule 13 of its Rules of Procedure, to include an additional item on the agenda of the resumed thirteenth session titled "Permanent premises of the International Criminal Court".

## **B. Consideration of issues on the agenda of the Assembly at its resumed thirteenth session**

### **1. States in arrears**

14. At its fourteenth meeting, on 24 June 2015, the Assembly was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to 11 States Parties.

15. The Vice-President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The Vice-President also appealed to all States Parties to pay their assessed contributions in a timely manner.

### **2. Credentials of representatives of States Parties at the resumed thirteenth session**

16. At its sixteenth meeting, on 25 June 2015, the Assembly adopted the report of the Credentials Committee (see annex I).

### 3. Election to fill a judicial vacancy

17. At its fourteenth plenary meeting, on 24 June 2015, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of the Assembly should continue until as many candidates as were required for a seat to be filled had obtained, in one or more ballots, the highest number of votes and a two-thirds majority of the States Parties present and voting. Consequently, the candidate elected as judge should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days.

18. At the same meeting, the Assembly recommended that the candidates should not be present in the conference room when the Assembly was engaged in the process of voting.

19. At its fourteenth plenary meeting, held on 24 June 2015, the Assembly proceeded to elect a judge of the International Criminal Court to fill a judicial vacancy in accordance with the relevant provisions of the Rome Statute, as well as of resolution ICC-ASP/3/Res.6, as amended by resolutions ICC-ASP/5/Res.5 and ICC-ASP/13/Res.5.

20. The following candidate was elected a judge of the International Criminal Court:

Raul Cano Pangalangan (ASIA, list B, M)<sup>4</sup>

21. The Assembly conducted two ballots. In the second round, 84 ballots were cast, of which none were invalid and 84 were valid; the number of States Parties voting was 84 and the required two-thirds majority was 56. The following candidate obtained a two-thirds majority of the States Parties present and voting: Raul Cano Pangalangan (59 votes).

#### *Commencement of the term of office of the judge*

22. At the fourteenth plenary meeting, on 24 June 2015, the Assembly, on the recommendation of the Bureau, decided that the term of office of the judge elected to fill the judicial vacancy shall run from the date of the election for the remainder of the term of his predecessor, that is, until 10 March 2021.

### 4. Permanent premises of the International Criminal Court

23. At its sixteenth meeting, on 25 June 2015, the Assembly adopted, by consensus, resolution ICC-ASP/13/Res.6, whereby the Assembly, inter alia, approved an increase of the unified budget envelope for the amount of €6 million, which would have no direct or indirect effect on contributions of States Parties and only be funded through a reduction of the authorized level of the Employee Benefits Liabilities fund and the Working Capital Fund without affecting the Contingency Fund. The Assembly also requested the External Auditor and the Committee on Budget and Finance to give detailed advice on the reduction of those two funds. In addition, the Assembly requested the Bureau to decide by the end of September 2015 on the level of reduction of the two funds. Furthermore, the Assembly requested the External Auditor to carry out an independent and detailed review of the project accounts with emphasis on the cost overruns. The Bureau was also entrusted to consider the issue of responsibility and accountability for the situation which had led to the cost overrun, and to report thereon to the Assembly, including proposing any actions to be taken, if appropriate.

### 5. Other matters

#### (a) *Waiver of the impediment of four members of the Advisory Committee on Nominations of Judges to be re-elected*

24. At its sixteenth meeting, on 25 June 2015, the Assembly approved by consensus the decision to waive the impediment, contained in paragraph 6 of the terms of reference of the Advisory Committee on Nominations (annex to ICC-ASP/10/36), of four of the first

<sup>4</sup> ASIA = Asia-Pacific States; and  
M = male.

members of the Committee to be re-elected in order to facilitate the continuity of the work of the Committee.

(b) *Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly*

25. The Assembly expressed its appreciation to Australia and Finland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly.

26. The Assembly noted with satisfaction that eight delegations had made use of the Trust Fund to attend the resumed thirteenth session of the Assembly.

## Part II

### Resolutions and decisions adopted by the Assembly of States Parties

#### A. Resolutions:

##### **Resolution ICC-ASP/13/Res.6**

*Adopted at the 16<sup>th</sup> plenary meeting, on 25 June 2015, by consensus*

##### **ICC-ASP/13/Res.6** **Resolution on permanent premises**

*The Assembly of States Parties,*

*Recalling* its resolutions adopted with regard to the permanent premises, and *reiterating* the importance of the permanent premises to the future of the Court,

*Stressing* that in its previous resolutions the Assembly had manifested 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* that the existing pressure on the strategic reserve of the project, as a result of reductions on other reserves made before 2013, had led the Assembly to delegate to the Oversight Committee the authority 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 authorization from €195.7 million up to a maximum of €200 million, to ensure the financial security of the project,

*Noting* the report of the Project Director on the status of the unified project,<sup>1</sup> and his request that the budget be increased in 2015 by an additional €8,808,725, and that €1,993,524 of this total might only be needed as an authorization to enter commitments after the end of July 2015, while at the project end no actual disbursement might take place, if the sharing mechanism of the contract with the General Contractor produces such currently expected results; *also* noting that, according to the Project Director, if such budget increase was not granted, after the end of July 2015 the Project Director will not be able to enter into additional obligations, with the result that the transition of the Court to the new premises would have to be postponed until 2016, with additional costs for the simultaneous occupation of the interim and permanent premises as well for the Court's operations,

*Further noting* that the Project Director has resigned on 27 May 2015,

*Further noting* that a substantial budget overrun has been communicated to the Oversight Committee only on 28 May 2015, and that on the same date the Oversight Committee has requested the External Auditor to provide an urgent audit of the project,

*Recalling* its objective that the permanent premises project be completed by September 2015 and that the Court be able to progressively move into and take full occupation of the new premises by December 2015,

*Also recalling* that the Assembly's objectives included 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,

*Taking into account* the urgent need for a solution which is not to create a precedent for future decisions,

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<sup>1</sup> *Official Records ... Resumed Thirteenth session ... 2015* (ICC-ASP/13/20/Add.1), annex III, appendix II.

1. *Takes note* of the report of the Chair of the Oversight Committee to States Parties, dated 24 June 2015;<sup>2</sup>
2. *Authorizes* an increase of the unified budget envelope in the amount of €6 million, bringing the total project budget to €206,000,000, of which €1,993,524 shall not be disbursed if the sharing mechanism of the contract with the General Contractor produces such currently expected results;
3. *Decides* that the newly authorized budget envelope will only be funded through reduction of the authorized level of the Employee Benefits Liabilities fund and the Working Capital Fund and, in any case, not affect the Contingency Fund;
4. *Decides* that such budget increase shall have no direct or indirect effect on the contributions of States Parties and that, to that end, the Court shall not assess contributions of States Parties nor otherwise preempt their rights pursuant to the Rome Statute and the Financial Regulations and Rules;
5. *Requests*
  - (a) The External Auditor to provide the Bureau with a detailed report on the appropriate level of the cash reserves of the Court, and on any risks that might be attached to their reductions;
  - (b) The Committee on Budget and Finance to provide the Bureau with recommendations on such reductions;
6. *Requests* the Bureau, at a session open to all States Parties to be held in The Hague, to decide by the end of September 2015 on the level of reduction, as appropriate, of the Employee Benefit Liabilities fund and the Working Capital Fund;
7. *Requests*, without prejudice to the governance structure of the permanent premises project set out in the relevant Assembly resolutions, the Registry, the Project Director's Office and the Oversight Committee to cooperate closely in carrying the project further and report on a regular basis to the Bureau on steps to be taken with regard to the effectivity and break down of costs, including prioritising the expenses;
8. *Requests* the Project Director's Office to review the requirements of the unified project corresponding to obligations not yet entered into and, in particular, by revising construction and transition items so as to avoid that they reflect any state-of-the-art concept of quality, with the view of achieving a cost reduction in those areas of the project that do not affect the occupation by the Court by December 2015;
9. *Also requests* the Project Director's Office to report separately on expenditures of the construction and transition projects in advance of the twenty-fifth session of the Committee on Budget and Finance;
10. *Further requests* the External Auditor to carry out an independent and detailed review of the project accounts with emphasis on the cost overruns and to report to the Bureau;
11. *Invites* the Committee on Budget and Finance to analyze the cost overruns;
12. *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 the budget increase herewith approved, including by authorizing in advance any obligations to be entered by the project;
13. *Requests* the Bureau to take, on the basis of the independent report by the External Auditor, the necessary steps in light of the mandate in Assembly resolution ICC-ASP/13/Res.2, as well as to consider the issue of responsibility and accountability, and to report thereon to the Assembly including proposing any actions to be taken, if appropriate;
14. *Reiterates* that the surplus pertaining to the financial period 2014 shall be allocated to funding the remaining transition costs up to €1.3 million, to be accounted for as one-time payments, and *decides* that any additional surplus pertaining to the 2014 and following

<sup>2</sup> *Official Records ... Resumed Thirteenth session ... 2015* (ICC-ASP/13/20/Add.1), annex III.

financial periods shall be allocated to offset the budget increases approved by the Oversight Committee pursuant to its delegated authority, up to the amount of €4,300,000, and *calls upon* States Parties to pay in a timely manner their assessed contributions to the Court against the regular budget and the permanent premises budget;

15. *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,<sup>3</sup> and their availability to assist the evaluation of the project performance under the current circumstances; and

16. *Requests* the Oversight Committee to continue to provide regular progress reports to the Bureau and to regularly inform The Hague Working Group and report back to the Assembly at its next session.

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<sup>3</sup> *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 82.

**B. Decisions:****Decision ICC-ASP/13/Dec.2**

*Adopted at the 16th plenary meeting, on 25 June 2015, by consensus*

**ICC-ASP/13/Dec.2****Decision: Waiver of the impediment of four members of the Advisory Committee on Nominations of Judges to be re-elected**

*The Assembly of States Parties,*

*Considering* the vacancies that arose throughout 2014 within the Advisory Committee on Nominations, and to facilitate the continuity of the work of the Committee,

*Decides* to waive the impediment, contained in paragraph 6 of the terms of reference of the Advisory Committee on Nominations (annex to ICC-ASP/10/36), of four of the first members of the Committee to be re-elected.

## Annexes

### Annex I

#### Report of the Credentials Committee

*Chairperson:* Ms. Minna-Liina Lind (Estonia)

1. At its first plenary meeting, on 8 December 2014, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, appointed a Credentials Committee for its resumed thirteenth session, consisting of the following States Parties: Bosnia and Herzegovina, Chile, Côte d'Ivoire, Denmark, Estonia, Liechtenstein, Mali, Paraguay and Samoa.

2. The Credentials Committee held two meetings, on 24 and 25 June 2015.

3. At its meeting on 25 June 2015, the Committee had before it a memorandum by the Secretariat, dated 25 June 2015, concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the resumed thirteenth session of the Assembly of States Parties. The Chairman of the Committee updated the information contained therein.

4. As noted in paragraph 1 of the memorandum, formal credentials of representatives to the resumed thirteenth session of the Assembly of States Parties, in the form required by rule 24 of the Rules of Procedure, had been received as at the time of the meeting of the Credentials Committee from the following 55 States Parties:

Andorra; Argentina; Australia; Bangladesh; Bosnia and Herzegovina; Brazil; Bulgaria; Burundi; Canada; Chile; Colombia, Cook Islands; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Dominican Republic; Ecuador; Estonia; Fiji; Finland; Germany; Greece; Guatemala; Hungary; Italy; Jordan; Liechtenstein; Lithuania; Luxembourg; Madagascar; Malta; Mexico; Panama; Peru; Philippines; Poland; Portugal; Republic of Korea; Republic of Moldova; Romania; Samoa; Senegal; Serbia; Slovakia; Slovenia; South Africa; Spain; Suriname; Switzerland; Trinidad and Tobago; United Kingdom of Great Britain and Northern Ireland; Venezuela (Bolivarian Republic of); and Zambia.

5. As noted in paragraph 2 of the memorandum, information concerning the appointment of the representatives of States Parties to the resumed thirteenth session of the Assembly of States Parties had been communicated to the Secretariat, as at the time of the meeting of the Credentials Committee, from the Head of State or Government or the Minister for Foreign Affairs, by the following 27 States Parties:

Afghanistan; Albania; Bolivia (Plurinational State of); Burkina Faso; Cabo Verde; Côte d'Ivoire; Democratic Republic of the Congo; Djibouti; France; Georgia; Ghana; Ireland; Japan; Kenya; Latvia; Lesotho; Marshall Islands; Mongolia; New Zealand; Nigeria; Paraguay; State of Palestine; Sweden; the former Yugoslav Republic of Macedonia; Uganda; Uruguay and Vanuatu.

6. The following four States Parties submitted their credentials to the thirteenth session and had not communicated to the Secretariat any information regarding amendments to their representatives to the resumed thirteenth session, and, therefore, it is understood that their representatives are the same as in the regular session:

Austria; Belgium; Netherlands; and Tunisia.

7. The Chairperson recommended that the Committee accept the credentials of the representatives of all States Parties mentioned in the Secretariat's memorandum, on the understanding that formal credentials for representatives of the States Parties referred to in paragraph 5 of the present report or in paragraph 6, where there are changes from the regular session, would be communicated to the Secretariat as soon as possible.

8. On the proposal of the Chairperson, the Committee adopted the following draft resolution:

*“The Credentials Committee,*

*Having examined the credentials of the representatives to the resumed thirteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, referred to in paragraphs 4, 5 and 6 of the present report;*

*Accepts the credentials of the representatives of the States Parties concerned.”*

9. The draft resolution proposed by the Chairperson was adopted without a vote.

10. The Credentials Committee recommends to the Assembly of States Parties the adoption of a draft resolution (see paragraph 12 below).

11. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

### **Recommendation of the Credentials Committee**

12. The Credentials Committee recommends to the Assembly of States Parties to the Rome Statute of the International Criminal Court the adoption of the following draft resolution:

**“Credentials of representatives to the resumed thirteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court**

*The Assembly of States Parties to the Rome Statute of the International Criminal Court,*

*Having considered the report of the Credentials Committee on the credentials of representatives to the resumed thirteenth session of the Assembly and the recommendation contained therein,*

*Approves the report of the Credentials Committee.”*

## **Annex II**

### **Statement by Canada in explanation of position after the adoption of the report of the Credentials Committee\***

1. Canada has taken note of the report of the Credentials Committee and notes that the representatives of the Palestinian Authority have been seated amongst States Parties at this meeting of the Assembly of States Parties.
2. It is and remains Canada's firm position that the Palestinians do not meet the criteria of a state under international law, and are not recognized by Canada as a state.
3. As the question of Palestinian eligibility to accede to the Rome Statute remains a matter of dispute, any decision to treat "Palestine" as a State as of this session of the ASP, rather than continuing to treat them as a non-state entity, must be understood to be without prejudice to any future judicial determinations on this issue.
4. Canada requests that this statement be included in the Official Records of this resumed thirteenth session of the Assembly of States Parties.

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\* After the second meeting of the Credentials Committee, on 25 June 2015.

## Annex III

### Report of the Chair of the Oversight Committee

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#### *Summary*

On 17 June 2015, the Project Director reported to the Oversight Committee a cost overrun in the permanent premises project, that would require a budget increase of €8,787,249 to be approved by the Assembly by the end of July 2015, in order to avoid significant disruption because of the inability of the Court to move to the new premises by December 2015.

On 18 June 2015, the Oversight Committee agreed that the Chair would submit on 19 June 2015 the options that would appear available to bring about a solution for the budgetary and financial needs arising out of the *Report of the Project Director's Office - Status of the Unified Project*.

Timelines of the emergence of the current situation and actions taken and planned.

### **I. Financial situation of the permanent premises project**

1. The Oversight Committee (“the Committee”) was informed by the Project Director, on 28 May 2015, that mistakes had been made in calculations that would have resulted in a cost overrun of possibly €7 million, but that revised calculations required a two-week period. The Committee submitted to the External Auditor a request to conduct an audit on an urgent basis, by the end of June 2015.

2. On 17 June the Project Director submitted to the Committee the attached report,<sup>1</sup> according to which a total amount of €8,787,249 was requested in order to finalize the project.<sup>2</sup> This would bring the project budget from the currently authorized level of €200 million to €208,787,249.

3. The Committee was also reported that, if such increased budget is not approved by the Assembly of States Parties before the end of July 2015, the transition of the Court to the

<sup>1</sup> Report of the Project Director's Office - Status of the Unified Project.

<sup>2</sup> Of which, €6,793,725 to cater for the worst-case scenario, and €1,993,524 for the worst-case shared saving for the Court [following the mechanism adopted under the NEC 3 contract adopted for the project].

new premises would not take place by December 2015, and would be pushed forward at least until March 2016, at an additional cost of €1 million.

4. On 18 June 2015, at its seventh meeting the Committee considered the report of the Project Director, and explored potential approaches. Bearing in mind the limited timeframe remaining for information to be submitted to States Parties, appropriate consultations to be conducted, and any possible proposals to be tabled and discussed at its next meeting, on 22 June 2015, before the incoming thirteenth resumed session of the Assembly (24-25 June 2015), the Committee agreed to consider the alternative solutions that the Chair would identify on the basis of the discussions held thus far. The Hague Working Group would then be informed of the decision of the Committee. Proposals for the Assembly to consider, if any, would be submitted to the Bureau on 23 June 2015.

## II. Timelines and actions

5. The current financial situation of the project has emerged as follows, bringing to the status also indicated below:

*On 15 April 2015* the Committee was presented by the Project Director's Office with an explanation of the scenarios anticipating the final account related to the construction contract with the General Contractor (Courtys),<sup>3</sup> in order to explore the merits of a wrap-up deal that would introduce certainty in the financial forecast until the project end, instead of letting the contract run its normal course and produce the final outcome.

*On 20 April 2015* the Committee authorized the Project Director to negotiate the wrap-up deal up to a maximum of €3 million.<sup>4</sup>

*On 12 May* the Project Director informed the Chair of the Committee that:

- (a) He would have resigned, with effect sometime in July 2015,
- (b) He had agreed with the Registrar a solution for his replacement and to ensure continuity in the project, whereby the Senior Legal Officer of his office would remain in charge of the Office and he himself would have remained available for advising the decision-making process in the project, for 30 days over the remaining months of 2015.

*On 21 May 2015* the Project Director reported that a "Construction Contract Settlement Proposal" - the wrap-up deal with Courtys - was achievable at around €3.0 million. As a consequence, out of the €4.3 million of the ASP 13 delegated authority to the Committee, around €1.3 would remain in the additional project reserve for other unexpected circumstances.

*On 26 May 2015* the Project Director informed the Committee<sup>5</sup> that

- (a) His resignation would be effective as of 3 July, and the new employer (United Nations in Geneva - Strategic Heritage Plan for the *Palais des Nations*) had not consented to any further postponement of this date,
- (b) There were the following project risks, for a total of €75,000:
  - (i) Construction project - €400,000 due to AV provisions
  - (ii) Transition project - €175,000 in the area of GSS.
- (c) He confirmed the solution jointly agreed with the Registrar for his replacement, as outlined above.

Members of the Committee flagged an interest for looking into other solutions.

*On 27 May 2015* the Project Director forwarded a resignation letter,<sup>6</sup> and the Registrar accepted such resignation.<sup>7</sup>

<sup>3</sup> Note of the PDO on the possible scenarios for the final account – Courtys, 15 April 2015.

<sup>4</sup> Oversight Committee, agenda and decisions, fifth meeting, 20 April 2015.

<sup>5</sup> Informal *ad hoc* meeting.

On 28 May 2015 the Project Director reported to the sixth meeting of the Committee that two mistakes had been made in calculations,<sup>8</sup> which would have brought to a cost overrun of possibly €7.0 million,<sup>9</sup> but that calculations still needed to be revised to assess the actual status of the financial situation. The reported cost overrun of €7 million included the €4.3 million increased costs already factored in with the 2014 delegated authority to the Committee to increase the budget up to €200 million, with a “fresh” overrun of €2.7 million (€7 million - €4.3 million =). The Committee:

- (a) Requested the Project Director to receive revised calculations within two weeks,
- (b) Decided that, under the current circumstances, the project and its accounts had to be audited by the end of June 2015, and to submit an urgent request to the External Auditor to that end.

On 11 June the Chair reminded the Project Director of the expiration of the assigned deadline.<sup>10</sup>

On 12 June 2015 the Project Director submitted a chart,<sup>11</sup> informing that the revised calculations brought up a scenario which required to be urgently addressed,<sup>12</sup> and that if the Assembly had not approved by July 2015 an increase of the budget, the transition project would be delayed until at least March 2016, at an additional cost of €1 million.<sup>13</sup>

On 12 June 2015, the Chair replied that “the information in the chart is too succinct to provide enough explanation for such an important decision-making, first within the Committee and, eventually, if this course of action is selected, in the Assembly. Would the PDO please provide a detailed narrative for the explanation of the current financial situation. We need that at the latest by Monday 15, at 12:00”.<sup>14</sup>

On 15 June 2015 the PDO replied that “[W]e are still working on the figures that we will present to the auditors on Wednesday morning in the format that they have asked for. For this reason, we cannot send you before noon today the information that you have requested. Only if the figures are clear can we do the narratives with all guarantees”.<sup>15</sup>

On 16 June 2015 the Chair further indicated what information should support a readable report on the current financial situation and, upon answers to several points by the PDO, insisted that all the needed information had to be compiled in a structured presentation.<sup>16</sup>

On 17 June 2015, the written report of the PDO<sup>17</sup> was received by the Chair and forwarded to the Committee. The report of the PDO “request[ed] an increase of the budget [...] for a total amount of €8,787,249”.<sup>18</sup>

On 18 June 2015, at the seventh meeting of the Committee, the report of the PDO and possible ways forward were discussed.<sup>19</sup>

<sup>6</sup> Email 27 May 2015, 14:36.

<sup>7</sup> Email 27 May 2015, 15:54.

<sup>8</sup> Document “Scenario deal Courtys”, circulated at the meeting.

<sup>9</sup> Oversight Committee, *Agenda and Decisions*, sixth meeting, 28 May 2015, page 3.

<sup>10</sup> Email 11 June 2015, 09:52.

<sup>11</sup> Now attached to the “Report of the PDO on the Status of the Unified Project”, received on 17 June, at 10:10.

<sup>12</sup> Email 12 June 2015, at 11:46 (Mr. Juan Escudero): “the permanent premises project is about to reach the point when obligations will get to the maximum authorized budget ceiling of €200 million (possibly as early as the end of June). The figures also show that the project will end with an overrun of between -€1.2 million in the best-case scenario and -€6.7 million in the worst-case scenario. Both matters need to be addressed urgently and the PDO is working on presenting some options to the Committee”.

<sup>13</sup> Email 12 June 2015, 17:31 (Mr. Juan Escudero).

<sup>14</sup> Email 12 June 2015, 17:54.

<sup>15</sup> Email 15 June 2015, 12:01 (Mr. Juan Escudero).

<sup>16</sup> Emails 16 June 2015, 11:45 and 13:29.

<sup>17</sup> Email 17 June 2015, 10:10 (Mr. Juan Escudero), forwarding the Report of the PDO on the Status of the Unified Project.

<sup>18</sup> *Ibid.*, para. 74.

19 June 2015 (Friday), the Chair circulated

- (a) To all States Parties
  - (i) A Briefing concerning the emergence of the current issue,<sup>20</sup>
  - (ii) The report of the PDO dated 17 June,<sup>21</sup>
- (b) To the Committee, a Note concerning alternative options for a solution;<sup>22</sup>

22 June 2015 (Monday), at

09:00 – The Committee convened for its eight meeting to discuss the options available and make a decision on the way forward,

12:00 – The Chair and the Project Director briefed the Hague Working Group, under the chairmanship of the Vice-President of the Assembly, Ambassador Alvaro Moerzinger;

23 June 2015 (Tuesday), at

09:00 – The Committee re-convened for discussing the options available, and made a decision based on Option 3 of the Chair’s proposal dated 19 June 2015, i.e. agreed with a budget increase in the amount requested by the PDO but without any increase on contributions for States Parties and funding through a reduction of the cash reserves of the Court (Working Capital Fund and Employee Benefit Liabilities);

10:00 – The Chair of the Committee reported the decision made to the Bureau, presented a draft resolution based on the elements agreed in the Committee, and asked that the Assembly of States Parties be seized with the matter on an urgent basis, at its thirteenth resumed session, to be held on 24-25 June 2015.

A proposal, alternative to the draft resolution prepared by the Committee, was also presented by one State Party, which provided that the budget increase be approved but its funding postponed until the fourteenth session of the Assembly, in November 2015.

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<sup>19</sup> Participants included, as observers, the External Auditor, the independent Expert of the Committee, and the representatives of Austria, Belgium, France, Palestine, and Spain.

<sup>20</sup> *Briefing to States Parties*, dated 19 June 2015.

<sup>21</sup> Report of the Project Director’s Office – Status of the Unified Project, re-issued under the date 19 June.

<sup>22</sup> Proposal for €8.7 million budget increase: options for the Committee, dated 19 June 2015.

## Appendix I

### Proposal for €8.7 million budget increase: options for the Committee, dated 19 June 2015

1. At its seventh meeting, on 18 June 2015, the Oversight Committee agreed that the Chair would submit on 19 June 2015 the options that would appear to be available in order to bring about a solution for the budgetary and financial needs arising out of the *Report of the PDO on the Status of the Unified Project*, submitted to the Committee on 17 June 2015.

2. Two distinct profiles have to be taken into account:

- (a) The budget level, i.e. the authorization to commit resources against anticipated costs,
- (b) The funding of the budget level.

3. The cash resources available to funding the project are currently well in excess to the potential financial needs of the project itself, even under the reported cost overrun scenario. However, a decision to resort to the following funding channels would have different impact on how States Parties would be called to increase their contributions to the project:

- (a) Loan of the host State, up to €200 million,
- (b) One-time-payments of States Parties, for [€1.5] million,
- (c) 2012 surplus, for €4.4 million,
- (d) Cash reserves of the Court that can be accessed up to the remaining €1.3 million.<sup>1</sup>

In addition, ASP 12 (2013) had authorized to resort to the surplus of the financial periods 2013 and 2014 for funding the remaining part of the transition costs (€1.3 million), or to resort to the cash reserves of the Court, under certain conditions.

However, the €4.3 million of budget increase delegated to the authority of the Committee by ASP 13 (2014) still need to be funded.

4. The Committee had discussed in the past ways to reduce the quality requirements and, hence, the cost of the project. The enhanced reporting by the Project Director has enabled the review of detailed cost components. However, the developments of these costs have escaped from an actual control function of the Committee. At the current late stage of the project, an effort to identifying elements in the obligations still to be entered - that would allow a review of costs downward - could still be attempted. However, the Project Director has indicated that reducing the quality requirements for the Audio Visual provisions (construction) and/or for the equipment (transition) would have a downgrading cost that might offset the savings achieved. While this avenue should continue to be explored under the relevant options proposed below, it cannot represent *per se* an option applicable to the total amount of cost overrun that is addressed in the Project Director's proposal.

5. The following options are identified taking into account the proposed budget increase, the cost for States Parties, and the most apparent advantages and risks:

- (a) Option 1 = maximum cost [€8,787,249], minimum risk
- (b) Option 2 = some costs [€1 million], maximum risk
- (c) Option 3 = no costs, some risks

<sup>1</sup> This amount remains to be funded out of the €1.3 million transition budget, after using the construction savings (€5.6 million) at the time of the unification of the construction and transition budget (2013) and the 2012 surplus (€4.4 million) that became available (2014) .

## **Option 1 - PDO request: budget and funding within the project**

### **Reasons**

Information in the *Report of the PDO on the Status of the Unified Project*, dated 17 June 2015.

### **Decision**

The Committee would submit to the ASP 13 resumed session, on 24-25 June 2015, a proposal for an increase of €8,787,249 in the budget of the permanent premises unified project, bringing the level of authorization from €200 million to €208,787,249.

Alternatively, an additional resumed session of the Assembly should be held by the end of July 2015, to provide the same authorization.

### **Advantage**

The Project Director would be able to enter the obligations until the project end, and secure the transition by December 2015.

### **Risks**

The additional budget request, with limited time for consultations, is likely to be met with significant opposition by States Parties. The alternative of holding a further resumed ASP session in July 2015 does not appear to be feasible, both in light of its cost, and of the summer period.

The funding of the budget increase would have to rely on either of the following:

(a) Use of surplus

The status of surplus, as a source of funding for the project needs, is volatile. Out of the €1.3 million transition budget, €5.7 million remained to be funded through the surplus of the financial periods from 2012 to 2014 (after use of the construction savings for €5.6 million), as decided at ASP 12 (2013). As €4.4 million were funded with the 2012 available surplus and at the closure of the accounts no positive surplus had been available for the financial period 2013, €1.3 million remains to be funded. In addition, the €4.3 million of budget increase delegated to the authority of the Committee by ASP 13 (2014) still need to be funded. In total, if surplus was used as a primary source of project funding, €5.6 million would be already requested to finance the 2013 and 2014 approved ASP decisions. If the current additional budget request was authorized, a total of €14.4 million would still be required of funding,

(b) Use of cash reserves

While this funding can take place under other scenarios, as well, if the project budget is increased, the use of the Court's reserves would primarily serve the purpose of avoiding resorting to the loan, and thereby to contract the repayment obligation with the host State. In this case, the cash draw down from the reserves should still be reimbursed to the Court, and additional contributions should be assessed and levied from States Parties,

(c) Loan of the host State

This solution will increase the cost for interests for those States Parties that have already accessed to the reimbursement of the loan, and also bring into the same system all those States Parties that have instead selected the option of one-time-payments,

## **Option 2 - Reject any budget increase and funding**

### **Reasons**

Reluctance of States Parties to deal with the request within the available timeframe.

### **Decision**

No action taken by the Committee.

### **Advantage**

No disruption to the ASP 13 resumed session.

### **Risk**

Transition cannot take place in December 2015, and additional costs are incurred for occupying and maintaining both the interim and permanent premises at least until the approval of the relevant authorization is granted at ASP 14, in November 2015. As the Court is indicating that two simultaneous trials might have to be held from January 2016, disruption might arise in the use of courtrooms.

## **Option 3 - Mixed budget and funding**

### **Reasons**

While the current project is the result of the unification enacted in 2013 to enable the transition to proceed in a timely and efficient manner, at the current juncture it is the finalization of the transition project that would not be possible without the requested budget increase.

### **Decision**

The Committee would submit to ASP 13 resumed session, on 24-25 June 2015, a proposal for an amendment to the 2015 annual budget of the Court, whereby an amount of transition costs equal to the budget increase requested by the Project Director, i.e. €8,787,249, would be absorbed within the Court's budget and funded within the authorized appropriations.

Any cash needs that would arise in the period when authorized expenditures are to be incurred (2015 and 2016), would be covered through the existing Court's reserves, including but not limited to

- (a) The Working Capital Fund,
- (b) The Contingency Fund (if possible),
- (c) Any available surplus, with the possibility to also resort to the surplus of at least the period 2015, if a system of cash advances is approved (similar to the one adopted at ASP 12 for the transition costs), with repayment until 2017.

### **Advantages**

This option would

- (a) Not require an increase in the contributions of States Parties
- (b) Likely be approved swiftly,
- (c) Be expected to force additional budgetary discipline and efficiency measures.

### **Risk**

The Court would have to find significant efficiencies within its 2015 budget. To avoid disruption to the operations, in case it is so required, both the notifications and the implementation of the contingency fund would be higher.

## Appendix II

### Report of the Project Director's Office – Status of the Unified Project, re-issued under the date 19 June 2015

#### I. Introduction

1. The mandate of the Project Director's Office is to ensure that the permanent premises of the Court are built on time, within cost and to specification and quality.
2. While the project is on time, and the quality of the original scope has been improved, it is now expected that the unified project will have an overrun, which requires authorization by the Assembly of States Parties.
3. Over the years the original authorized construction budget of €90 million has been reduced whilst the requirements to be realized within it have continued to increase. For example, in 2011, the estimate of the additional costs not originally included within this budget totalled 42.2m, comprising 22.1m for Integrated building related user provisions (or 3gv – e.g. data cabling, court furniture, reception desks, audio visual equipment, etc.) and 20.1m for the transition activities (or 2gv – e.g. loose furniture, interactive visitor exhibit, move costs, etc.). All of these works have been incorporated within the current unified budget level of €200 million.
4. Additional scope and quality enhancements have been also added to the project.

#### II. Quality

5. The major additions to the scope and quality enhancements made to the project (**Total of €12.6 million**) represent 6.3% of additional added value.
6. *Total Cost of Ownership Investments* made to lower future annual cost (TCO investments); These changes were implemented and approved based on thorough individual business case analysis in the total amount of **€2.8 million** extra cost but realising annual operational savings of circa €392,000 per annum over the life of the building. Examples of these types of investments include a) LED lighting throughout, which significantly reduces both the future energy and maintenance costs; b) Adjustments for future flexibility of the offices enabling easy additions and reconfigurations of offices and workspaces in the future; c) Enhanced and optimized maintenance provisions to reduce the annual maintenance and operating cost; and d) Provisions to hold ASP sessions at the premises in the future thereby avoiding the cost for rental of external facilities.
7. *Upfront Capital contribution for the installation of the Heat & Cold Storage energy system (ATES)* in the amount of **€0.8 million** based on which the future energy costs will be at a much lower rate than originally planned.
8. *Investment has been made in completely new IT network hardware and servers* in the amount of **€3.5 million**. Originally the IT hardware was supposed to be reused, but turned out to have reached end of life so this reinvestment has been paid for by the project.
9. *Enhancements to the digital recording, archiving and broadcasting of Court hearings through the AV provisions* have been implemented with state of the art technology for a cost of **€1 million**. Providing High Definition quality streaming of future Court Sessions across the globe. The vast majority of the AV equipment had reached end of life and this reinvestment has also been paid for by the project.
10. *Additional security requests via Dutch government* during the project required the provision of a second DVNO route to the secure drop off being realised for a cost of **€0.7 million** and the bomb blast and security requirements of the entrance booths were increased to the amount of approximately **€2.0 million**.

11. *The Permanent Premises now houses approx. 200 more workstations* (due to growth of OTP) than originally foreseen in the original approved scope of 1200 workstations at a cost of approximately **€1.1 million**.

12. *Opportunities were also realised to enhance the visitor experience* in the new premises by making the premises fully accessible to the general public and the inclusion of a proper visitor's café, a small gift shop, a public section to the library and an interactive visitor's exhibit to tell the history and story of the Court and its activities at a combined total cost of circa **€0.7 million**.

### **III. Cost**

#### **A. Introduction**

13. The construction costs were initially set by the Assembly at no more than €190 million at 2014 prices. Projected savings on the construction cost were identified in the amount of €6.3 million, in 2013, of which €0.7 million were used for a change of the design to increase the flexible use of the permanent premises. As a consequence the savings amounted to €5.6 million, thus bringing down the construction budget to €184.4 million.

14. The construction and transition projects were unified on 5 July 2013 into a single permanent premises project, by decision of the Committee in full agreement with the Court. The Project Director reports to both the Committee and to the Registrar, on the operations and the finances of both the construction and the transition projects.

15. At the time of the unification of the projects, transition cost were reviewed downwards from the estimated original €20.1 million (as identified in 2011) down to an agreed budget of €1.3 million in 2013.

16. The construction budget of €184.4 million together with the transition budget of €1.3 million would be financed under the overall unified project budget of €195.7 million.

#### **B. Financial situation at the time of ASP 13**

17. The Oversight Committee, based on the information provided by the Project Director, reported at ASP 13 that the project costs virtually remained within the overall financial envelope of a maximum of €195.7 million.

18. However, the financial forecast at the time highlighted the risk of a deficit, in particular in the construction project, requiring appropriate mitigation measures or additional resources.

19. In the last monthly report issued by the Project Director's Office and the Project Manager before the Assembly of States Parties, at the end of October 2014, under the best-case scenario, the positive balance of the project budget was €16,206 taking into account an estimated share of €2,910,473 under the NEC3 contract that, if realized, would only be capitalized at project end. Under the worst-case scenario, the project budget balance would be negative in the amount of €2,836,131.

20. Accordingly, and based on the advice of the Project Director and the Committee's independent expert, the Committee submitted to the approval of the Assembly a decision whereby the Committee would get delegated authority to decide on any budget increase of up to €4.3 million, up to a total of €200 million for the unified project.

21. The request for increase of the budget of €4.3 million had been recommended by the Project Director in light of both the technical accountancy rules and increased pressures on both the construction and transition project budgets. This request was formulated on the basis of the worst-case scenario at the end of October 2014 (-€2,836,13) and reflected the need to ensure that appropriate budgetary authorization would exist for the Project Director to commit resources, if needed, in order to ensure procurement actions so that the project be not halted during 2015.

## C. Financial situation since ASP 13

22. The monthly Progress reports since ASP 13 in December 2014 have showed a deterioration of both the best and worse-case scenarios.

23. The 10 April report considered by the Committee at its 5<sup>th</sup> meeting on 20 April 2015, showed a best-case scenario of -€2,905,756 and the worst-case scenario reached -€4,720, 856, for the first time above the maximum additional amount authorized by ASP 13.

24. At the sixth meeting of the Committee, on 28 May 2015, the Project Manager submitted a revised version of the 10 April report, which corrected a mistake that had been made in the calculations since February 2015. As a result, the best-case scenario worsened to -€3,321,813 and the worst-case scenario to -€5,136,913, i.e. €0.4 million worse than the previously reported figures.

25. The Project Director requested the Committee to grant him and his team two weeks to go through all the figures and financial model, assess all the consequences of the miscalculation and provide the Committee with the correct reports and verified figures.

26. On 12 June 2015, the Project Director's Office submitted a table (attachment I) containing the verified figures for the unified project showing an overrun of -€5,462,715 in the best-case scenario (€1,162.715 on top of the additional €4.3 million reserve), and -€1,093,725 (€6,793,725 on top of the additional €4.3 million additional reserve).

27. The Project Director submitted also a graph showing the level of obligations and the cash out needed to complete the project in both the best and worst-case scenarios (attachment II). The graph shows that the permanent premises project will reach the point by the end of June 2015 when obligations will get to the maximum authorized budget ceiling of €200 million.

28. The Project Director informed the Committee that options were still being considered but that the situation seemed to require the ASP to approve, no later than July 2015, an increase of the budget limit, which would provide for the commitment level of the worst-case scenario. This would allow the project to obligate the funds needed and also to disburse the final cost at the end of the project and avoid delays. In the absence of such an authorization, the Project Director's Office would have to stop committing new funds by the end of June until the ASP14 in November 2015. Under this option, the construction project would still be finished by 1 September 2015 but the key transition project activities would need to be postponed until further authorization by the ASP. In this scenario the completion of the transition would be delayed until at least the end of March 2016, as the PDO would not be able to enter into the final contracts. This solution would have an additional cost to the transition project of approximately €1 million on top of the current estimates.

29. Following the additional request made on 12 June by the Committee to the Project Director, a clear and detailed narrative for the explanation of the current financial situation is provided below.

### 1. Construction budget

30. The worsening of the best and worst-case scenarios in the construction project since ASP 13 is summarized in the table presented as attachment III, which shows the evolution from the October 2014 progress report presented at ASP 13, to the revised 10 April 2015 report, and, then, to the present situation as at 12 June 2015, described in attachment I. Attachment IV shows a consolidated version of this evolution since October 2014 until 12 June 2015.

31. The items mainly responsible for the expected overrun are:

#### (a) *Floor plan changes*

32. As highlighted and discussed at the Committee meetings in 2014 (and in both 2014 CBF sessions), recent developments in the Court's Operations made it necessary to adjust

the floor plans from what was originally specified in the Works Information. This affected, in particular, the developments at the OTP (growth and activities) related to their Strategic Plan together with a number of senior management changes.

33. The approved space planning policy that was developed has meant as a result, that more workstations can be implemented in the building but that adjustments to the floor plans and partition layouts were needed for this. The effect is that the scope of the original project brief approved by the ASP, which was to provide 1200 workstations, has been increased to accommodate circa 200 additional workstations, which was approved by the Committee.

34. Should the floor plans have been realized as specified in the Works Information:

- (a) The Court would not be able to work efficiently;
- (b) Some parts the floor plans would not facilitate the needs of the current units/sections;
- (c) The amount of workstations that could be realized would not be as high as now is possible.

35. Implementing the floor plan changes in this late stage of the construction process makes it more expensive. However, had we not done this, the cost would be up to 50% higher if we were to wait and adjust the floor plans when the building is in use. It would also have generated a great deal of disruption to the Court's activities during 2016/17.

36. Also, the total amount of m<sup>2</sup> of walls are nearly one third less than was specified in the Works Information but already a small part was mounted and needed to be adjusted. The location of the air supply units needed to be adjusted since they have to be in the centre of the rooms. The sensor switching of the lighting also needed to be altered, together with the cabling and revised security adjustments (badge systems) were also needed to the enlarged OTP areas. We also have had to speed up the building activities (more labour crews) to meet the original Completion Date whilst still having these adjustments implemented. The net effect was that additional costs were incurred to the Mechanical & Electrical Services that we had originally anticipated to be offset by the reduction in overall quantity of the partitions.

37. Since the start of 2015, Courtys have also highlighted further associated costs with regards to the ceiling adjustments and claimed costs for adjusting all the design drawing. These costs have yet to be finally assessed and agreed with the Project Manager but the net effect is that this change is now estimated in the best case to cost €1,157,128 and in the worst case €1,635,862

(b) *Entrance pavilions*

38. Compared to the demands specified in the original Works Information, an additional conflicting demand was highlighted by the Security Section about resistance to a 10 kg TNT (Backpack Bomb) explosion inside the entrance pavilions. This is one of the originally agreed scenarios specified by NCTV (the host State security services anti-terrorism section) in the approved Security Brief and a requirement that was not taken into account in the original Works Information design of the entrance booths.

39. The other related security demands in this area are that the perimeter should not be breached if such an explosion occurs in the booths and that no flying debris from such an explosion should be able to penetrate the main building facades and endanger the lives of staff and visitors. The optimal way to solve this was in the redesign of the entrance booths themselves rather than upgrading the resistance of the perimeter wall and the building facades which would have had an astronomical effect on costs.

40. As we were aware that the Works Information design did not take into account the explosion forces inside the pavilions, at the outset of the construction project in October 2012 a specific allowance of €440,000 was estimated to cover for this, within the overall risk reserve of €2.9 million. The forces that such an explosion generates are very high and coupled with the added requirement that no debris from such an explosion could become a

projectile penetrating the main building façade it was impossible to meet the requirements with standard architectural solutions and using standard building components.

41. To meet these demands the structure needed to be adjusted, as did the entire architectural concept of the entrance pavilion façades to contain the cost increase as much as possible. The original architectural design of the booth façades was glass all around to provide a clear, transparent view through the pavilions (as per the original Architectural Competition requirement). This needed to be changed to only clear glass to the front (which has to be, not only bullet proof and resistant to break in from a determined attacker, but also resistant to the forces from an explosion inside the booth). In the end, the glass was changed to a concrete wall at the rear wall to ensure that no debris from an explosion could potentially penetrate this facade. Ventilation provisions had to be added in the roof to alleviate the huge air pressures which would be generated inside the pavilion in the event of an explosion causing the possible breach of the security perimeter. Further special provisions were also needed to contain flying debris around the doors (a glass debris catcher wall) and an enhanced enclosure to protect the lives of the staff located in the entrance booth badge office.

42. The pavilions have had to be entirely re-designed and re-engineered completely, but at the same time they still have to remain looking like the original architectural concept. We could not deviate from this because we would have had to adjust the design and reapply for the building permit, which would have caused considerable delays to the overall project schedule.

43. This has cost circa €2,000,000, against the original estimated allowance of €440,000 mainly due to having purpose bespoke designed doors and facades for the pavilions since no standard products exist that meet such a complex mix of security demands in combination with being a welcoming entrance to the ICC premises.

44. Courtys originally drafted a specification for this Compensation Event for a total amount of €2,454,449. The 'direct building cost' is in the area of €1,600,000, the rest was overhead. In our opinion, the overhead was much less, i.e. a maximum €400,000. We have eventually agreed with them on the final amount of €1,978,000.

(c) *Audiovisual provisions (AV)*

45. At the start of the project in 2009 the Court drafted a brief for the Audio Visual provisions (AV). During the design stage, a preliminary design was made by the consultant Peutz, a specialist for these type of provisions. For the detailed design this brief was followed. The scope of the design is: AV systems for the 3 Court Rooms including broadcast and storage provisions; AV systems for the press briefing room and associated media centre provisions; AV systems for the main conference cluster; AV systems for meeting rooms in the office area; and Dedicated cabling for the AV systems separate from the main IT data cabling.

46. Most of the AV provisions that are used in the current interim premises are now end of life and old technology that cannot be used anymore. For example, the camera and recording systems in use by the ICC are standard definition. This is no longer supported and is difficult to even purchase. Current market place technology is now, at a minimum, High Definition and rapidly moving towards Ultra High Definition. The new courtrooms are three times the size of the existing courtrooms and the magnification zooms on the existing standard definition cameras are not sufficient to cope with this change. Where possible, current equipment is re-used but as the courtrooms are larger in capacity it takes equipment from the two existing courtrooms to equip just one in the new premises. For example, the existing microphone system is reused to equip one courtroom (this has a saving value of about €400,000). The aim for the new premises project is to provide the best value for money for States Parties and by implementing the latest technology. It is foreseen that, for the first 10 years in the permanent premises no new technology would be necessary. In many instances this new technology is also now needed just to meet the existing operational standards from the Court.

47. Knowing the preliminary design and taking into account the economic recession, it was decided not to waste money on designing the provision as part of the construction

tender in 2011/12 since by the time the premises would be finished at the end of 2015 the design and the equipment would not be up to date. It seemed feasible at that time to implement all provisions for €6,000,000 (for design and built activities). Therefore, this provisional sum was added to the Courtys' contract (to ensure that the management costs of co-ordinating and integrating it into the premises was included by Courtys). Courtys would be in charge for the further engineering of the AV and responsible for implementing the provisions in time. In the transition project, a budget of €200,000 is also included for AV in the office meeting areas. In addition, the project team assessed the risk of this approach in 2012 and an allowance of €1.5 million was identified in October 2012 (as shown in the risk register attached to the OC progress reports from the outset of the construction phase, to cover for this specific item within the overall risk reserve allowance of €12.9 million).

48. After the start of the construction project, the Project Management team became aware that neither Courtys nor the original consultant could deliver the necessary specific expertise for the further engineering of the design, without either a high cost or a high involvement of ICC staff input. We therefore chose for the further design and engineering to be done in-house by the AV expert in the ICT section. This expert has drafted the Scope of Works for all AV provisions. ICC procurement has managed the procurement process under the lead of the PDO. The only part that has stayed with Courtys is the installation of the cabling for the AV as this needed to be integrated into the building prior to the finishes and courtroom fixed furniture.

49. By taking out of Courtys contract the rest of the AV provisions we prevented that a significant part (up to 20%) of overhead and design costs would also need to be funded via the provisional sum with the effect of leaving even less money available for the equipment itself.

50. The procurement results (received in February 2015 onwards) were less competitive than anticipated as it now seems that there are not many companies that can deliver the highly specialized equipment required (in particular the elements related to the necessary voice distortion and image distortion protection of witnesses). Therefore, the discounts and efficiency are not as high as anticipated as equipment is manufactured to our specialist requirements rather than being standard products.

51. The costs for the cabling are also higher than anticipated due to the further detailing of the design (in the Scope of Work specification for procurement and designing the necessary cabling). It has become obvious that the amount of separate components of the total AV system were much more numerous than the expectation following the functional demands and preliminary design. Each separate component has a separate and specific cable (i.e. a HDMI, CAT 6 data and /or fibre optic) to a central 'switch board'. For example, there is not one cable directly from a PC to a data projector (inclusive of audio) but one to the central 'switch board' and from the central switch board with separate cables to the projector beamer/screen and another to the audio speakers. This has an impact on both the quantity and the cabling quality. The cable types are of a higher standard (HDMI and/or fibre optic) to ensure that they do not rapidly become obsolete and therefore this is more expensive. Even so the expectation was that due to the current market conditions we could still have had a positive procurement result and no overrun of the available budget.

52. The combined result of this was in March 2015 a total quoted number of €8,300,000 against an expected allowance of 6.2 million (€7.7 million if the original risk reserve for this element was also included).

53. The PDO, working together with the ICT and AV section, has so far reduced the costs by choosing to mount some equipment and making it operational directly by the ICTS themselves. This saves for example about €600,000 against an original quoted figure of €1,600,000 for the Courtroom Audio and translation systems. We have also looked into other savings particularly in the Conference centre and meeting room systems, this will realise an amount of circa €500,000 against the original budget envisaged for this item to partially offset the increases.

54. This results in a total overrun of between about €2,200,000 in the best case and €3,500,000 in the worst case, including the most recent quotation for the Video/Audio Digital Recording and Archiving that is necessary to replace the existing tape archive recording and archiving that is rapidly becoming obsolete and is 700k higher than the

original budget allowance. If the original risk allowance amount of €1.5m were still available, the budget would be at a level of 7.7m which would be a budget overrun difference of €700,000 best case and €2,000,000 worst case. Since this is not the case, as the project risk allowance at this point in time has already been fully exhausted before getting to the AV procurements, the AV overrun is between €2.2 and €3.5 million.

55. Courtys have also tried to claim additional compensation events for extra cabling provisions and the co-ordination related to having a number of separate ICC-appointed AV contractors on site which is still being verified and assessed by the Project Manager. This accounts for the remaining variance between the best and worst case estimates.

(d) *Security and safety provisions*

56. One of the most complex requirements of the new premises is in the security levels, regimes, design and installations. These requirements often conflict with both the operational requirements and at times, the required architectural aspirations identified in the original Architectural Competition Brief. This has resulted in several compensation events that stem from where the original works information has inherent in it some ambiguity and areas where competing requirements had not been adequately resolved.

57. Since ASP 13 a number of further compensation event items related to the necessary Security & Safety provisions have been identified above the level originally identified and claimed by Courtys at that time that had arisen out of the finalisation of the ready for construction designs. These contribute to a worsening of the estimated project cost by a total further amount of between €1,147, 000 in the best case and €1,172,738 in the worst case.

58. One of the most significant costs within this figure is that of the DAS system which is a combined radio, mobile phone and paging system that provides emergency communication coverage throughout the building in the event of emergency situations enabling the floor wardens to be alerted to evacuate the building. It also requires radio receivers and transmitters throughout the building as an extension of the Dutch Emergency Services radio network to ensure full coverage of the C2000 network which is a requirement both of the DV&O Prison Transport service who use the building and a requirement from the building permit through the municipality of the Hague to allow the Dutch Police, Ambulance and Fire Services to communicate with each other throughout all areas of the building in the case of an emergency. Unfortunately when the tests were done to establish the available signal strength of the C2000 network (which can only be done when the building envelope has been fully constructed) it was found that the site was not covered by it at all, leading to a considerable increase in both the equipment necessary to ensure full coverage and to the host state having to extend the C2000 network to the site (which is done at their own cost). The original system was estimated at a cost of between €75,000 in the best case and €220,000 in the worst case at the point of ASP 13. It has however gone on to cost a total amount of €503,875.

59. As a further example, the requirement of the facades of the building is that they should withstand a car bomb blast associated with a possible terrorist attack. Therefore in all the main regular office areas (from 1<sup>st</sup> floor upwards) where the office partition walls meet the exterior façade a purpose made glass fin is installed to allow for the deflection of up to 600mm of the main façade caused by an explosion without this movement causing the collapse of the inner office partition walls. However due to the different external façade designed on the ground floor (which is entirely glass) this was not detailed in the original works information. The cost for these bomb blast fins is currently estimated at between €113,760 in the best case and €227,520 in the worst case but they cannot be eliminated without compromising the required safety and security standards of the building.

60. All changes of any monetary value whatsoever have always been reported on a monthly basis by PDO and the Project Management team and examined in detail by the OC who have the right to reject any item that they believe is in excess of either the required adequate quality standard laid down by the ASP resolutions and / or in conflict with the approved design requirements originally identified by the Court and approved by the Assembly.

*(e) Other Compensation Events*

61. Since the beginning of the project more than 350 Compensation Events were raised by the Contractor: 269 Compensation events until October 2014, and 82 Compensation Events between October 2014 and 12 June 2015.

62. A limited part of these relate to the major items like security and safety, floor plans and entrance booths. The large majority addresses all kind of issues, partly foreseen (related to allocated budgets), partly to be expected based on the Engineering and Construct Contract (risks) and to a certain extend related to program changes (mainly TCO investments and changes by users).

63. So far, the Project Manager has rejected and negotiated the value of all Compensation Events to the level of 66% of the quoted value by the Contractor.

*(f) Change in estimated shared saving*

64. In order to mitigate risks and encourage the Contractor to keep the costs as low as possible, the Court and the Contractor agreed on a contract that includes a sharing mechanism: The contractor will be paid the real justifiable costs up to a maximum of the contract value ("Total of the Prices"). If the costs are lower than the contract value, the difference is shared between the Contractor and the Court, based on agreed distribution percentages.

65. In order to have the best possible forecast of the real costs at the end of the project, the share part is estimated every financial period (four weeks) and presented in the progress report.

66. The estimate of the share part is based on (a) the expected contract value, which varies with the agreed compensation events (deviations of the original contract), and (b) the expected costs incurred by the contractor. These are estimated by the Project Manager based on out-of-pocket costs of the contractor, margins that are applicable and costs still to be expected to finish the works.

67. At the time of ASP13 the share part for ICC was estimated at €2.9 million. In the present best case scenario the contract value (due to compensation events) raises more than the estimated cost to finish the work. Therefore, the share part for the Court increases €0.5 million to the amount of €3.4 million.

68. In the worst case scenario the parameters of the negotiations with Courtys are applied. This leads to a raise in the contract value, but the costs augment even more. This results in a lower share part for the Court at the amount of €2.0 million.

*(g) Contingency*

69. Discussions with Courtys about a possible wrap-up deal took place on 7 May 2015. Immediately prior to this meeting, Courtys identified a figure of €500,000 that they believed should be added to the discussion to cover the amount of Compensation Events that they had not yet raised to the Project Manager. Based on this meeting and Courtys estimation, the Project Manager believes that it would be prudent to make a contingency allowance of this amount in the worst-case scenario and €100,000 in the best-case scenario in case there is any merit to Courtys claims of yet to be identified and raised possible further compensation events.

**2. Transition budget**

70. On 10 March 2015, the Project Manager informed the Committee that in relation to the transition project there was a potential overrun of €3.1 million caused by the different IT concept being implemented and different expectations as to what should be delivered for IT in the construction and transition projects, regarding cooling, fire detection systems, cabling, and procurement. The original concept of reutilizing the current IT system would no longer serve the functioning of the Court in a secure and efficient way. In a combined

effort with the IT section, a redesign of the IT system led to significant lower costs than expected but still a budget overrun on ICT of approx. €3.1 million could not be avoided.

71. On 9 April 2015, the Project Director informed the Committee that a value engineering exercise had been conducted with the support of the Registrar and the cooperation of the affected Court's sections to find savings in other lines of the transition project to compensate for the IT overrun. As a result of the value engineering exercise the transition project was again back within the approved budget of €1.3 million.

72. Some of the savings were achieved through agreed reduced budget allowances with the sections (approximately €1,343,000), by trying to provide the same output for a lower cost. This is the only category that has still some risks attached to it depending on the procurement results. These savings include a reduced allowance for furniture (€764,000), a reduced allowance for the move contractor (€275,000) and a reduced allowance for cleaning the building at the end of 2015 (€140,000).

73. A reserve of €500,000 has been included in the worst-case scenario of the transition project in the budget status at 12 June 2015 to cover the risk of said procurement results and taking into account that the budget for the transition project has never included 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 construction project reserve if they materialized.

### **3. Request for increase of the unified budget**

74. In view of the above information, the Project Director's Office requests an increase of the budget of the unified project (construction and transition projects) up to the worst-case scenario of the budget status at 12 June 2015, which is €6,793,725 plus the expected worst-case shared saving for the Court in an amount of €1,993,524, for a total amount of €8,787,249.

75. This increase would ensure that all possible obligations that may be necessary in the worst-case scenario would be covered through the final critical stages of the project to avoid potential delays and any unnecessary costs increases.

76. It should be noted that the transparent open book NEC3 contract utilised for the project means that only the real audited project cost is paid at the project end, together with the defined share.

## **IV. Timeliness**

77. The construction plan is within its timelines, and the premises are expected to be completed and ready for occupation by the Court, as planned, as from September 2015.

78. The transition project, including such costs as non-integrated user equipment, residual costs relating to the handing over of the interim premises, and moving costs, ensures that the Court will be ready to take full occupation of the permanent premises by no later than December 2015.

79. The period between September and December 2015 is still fully available for the Court to prepare for the move from the interim to the permanent premises. The actual move of the Court is scheduled to take place between 30 November and 11 December 2015.

80. If the budget increase is approved by the Assembly of States Parties, both the Construction and Transition budgets will be delivered on time as scheduled.

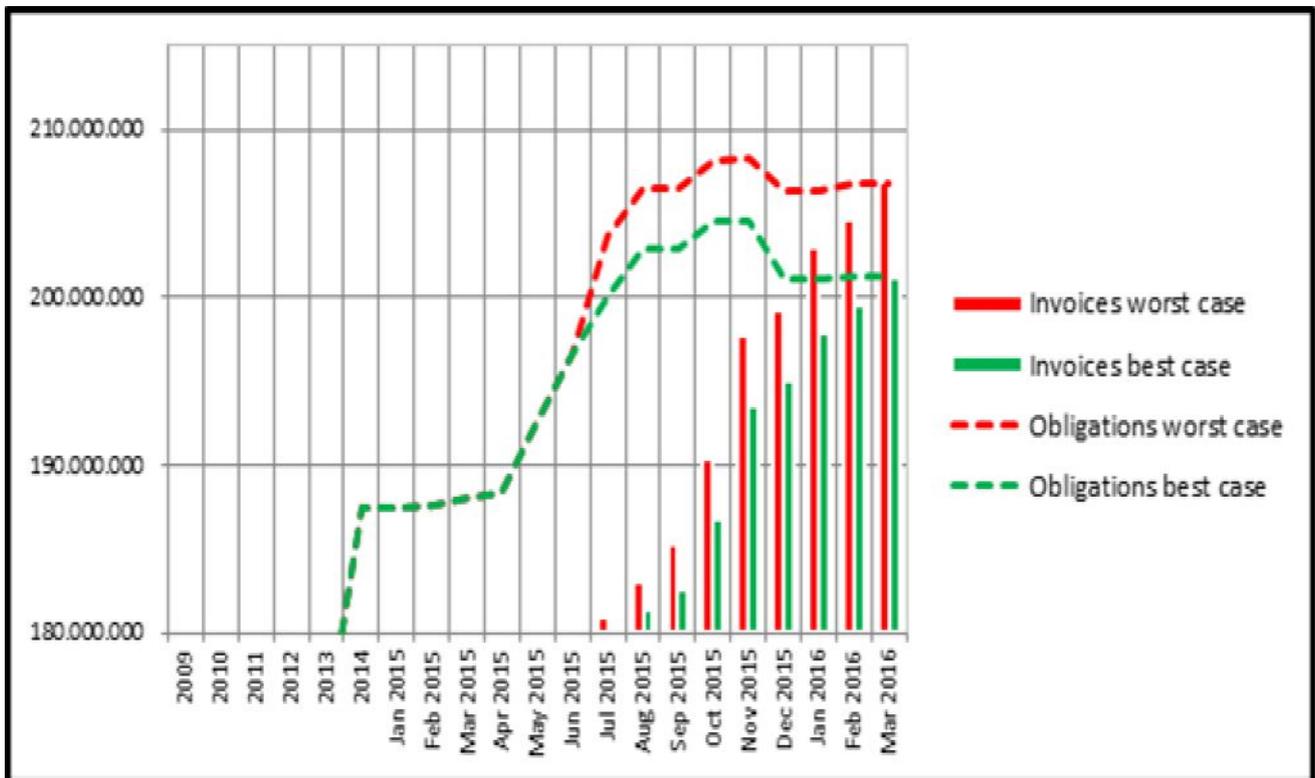
## Attachment I

## ICC PP Budget status 12 June 2015

	Budget	Best case	Worst case
<b>Construction cost</b>			
Form of Agreement (excluding AV)	141,040,700	140,792,613	140,792,613
AV	6,000,000	8,212,737	9,537,737
Other construction cost	719,000	1,394,226	1,394,226
Compensation Events	12,046,231	18,858,541	21,075,623
Permits& Dues	2,549,526	2,532,108	2,532,108
Fees	20,492,188	20,105,286	20,105,286
Other Cost	1,500,000	1,500,000	1,500,000
Additional budget	4,300,000	0	0
Subtotal construction	188,647,645	193,395,511	196,937,593
<i>Not obligated - reserve</i>		100,000	500,000
<i>Not obligated - AV</i>		800,000	1,800,000
<i>Obligated</i>		192,495,511	194,637,593
<b>Transition</b>			
Construction cost transition	1,082,355	224,775	239,775
Fees transition	3,450,820	2,992,549	3,062,549
Equipment transition	6,834,180	7,974,832	8,062,332
Reserve	0	0	500,000
Subtotal transition	11,367,355	11,192,156	11,864,656
<i>Not obligated - reserve</i>		0	500,000
<i>Not obligated</i>		5,064,970	5,237,470
<i>Obligated</i>		6,127,186	6,127,186
<b>Consolidated</b>	<b>200,015,000</b>	<b>204,587,667</b>	<b>208,802,249</b>
<i>Not obligated</i>		5,964,970	8,037,470
<i>Obligated</i>		198,622,697	200,764,779
<b>Budget</b>		<b>200,015,000</b>	<b>200,015,000</b>
<b>Saldo obligations (Budget -/- Consolidated)</b>		<b>-4,572,667</b>	<b>-8,787,249</b>
Share part ICC NEC3 contract		3,409,952	1,993,524
<b>Saldo expected costs (Saldo obligations -/- Share part ICC)</b>		<b>-1,162,715</b>	<b>-6,793,725</b>

## Attachment II

### Obligations and payments (cash out)



## Attachment III

### Evolution Progress reports since ASP13 to present

	<b>Best case</b>	<b>Worst case</b>
<b>Construction</b>		
<b>October 2014</b>	<b>616.206</b>	<b>-2.836.131</b>
Floor plans	-1.014.400	-1.348.134
Entrance booths	-678.679	-478.679
Audio Visual (AV)	-1.380.705	-900.705
Security & Safety	-962.190	-876.826
Other Compensation		
Events	-485.853	719.754
Change in shared saving	583.809	583.809
<b>April 2015</b>	<b>-3.321.813</b>	<b>-5.136.913</b>
Floor plans	-142.728	-287.728
Audio Visual (AV)	-1.537.464	-2.594.964
Security & Safety	-185.352	-295.912
Other Compensation		
Events	-266.228	-280.150
Contingency	-100.000	-500.000
Change in shared saving	-84.329	-1.500.757
<b>June 12th 2015</b>	<b>-5.637.914</b>	<b>-10.596.424</b>
<b>Transition</b>	175.199	-497.301
<b>Additional budget</b>	4.300.000	4.300.000
<b>Saldo</b>	<b>-1.162.715</b>	<b>-6.793.725</b>

**Attachment IV****Evolution Progress reports since ASP13 to present  
(consolidated)**

	<b>Best case</b>	<b>Worst case</b>
<b>Construction Project</b>		
<b>October 2014</b>	<b>616.206</b>	<b>-2.836.131</b>
Floor plans	-1.157.128	-1.635.862
Entrance booths	-678.679	-478.679
Audio Visual (AV)	-2.918.169	-3.495.669
Security & Safety	-1.147.542	-1.172.738
Other Compensation		
Events	-752.081	439.604
Contingency	-100.000	-500.000
Change in shared saving	499.479	-916.949
<b>June 12th 2015</b>	<b>-5.637.914</b>	<b>-10.596.424</b>
<b>Transition Project</b>		
<b>October 2014</b>	0	0
<b>June 12th 2015</b>	175.199	-497.301
<b>Additional budget</b>	4.300.000	4.300.000
<b>Saldo</b>	<b>-1.162.715</b>	<b>-6.793.725</b>

## Annex IV

### List of documents

ICC-ASP/13/43	Provisional agenda
ICC-ASP/13/43/Rev.1	Agenda
ICC-ASP/13/43/Add.1	Annotated list of items included in the provisional agenda
ICC-ASP/13/44	Election of a judge to fill a judicial vacancy of the International Criminal Court
ICC-ASP/13/44/Add.1	Election of a judge to fill a judicial vacancy of the International Criminal Court - Addendum - Withdrawal of candidature
ICC-ASP/13/45	Election of a judge to fill a judicial vacancy of the International Criminal Court: guide for the election
ICC-ASP/13/46	Report of the Advisory Committee on Nominations of Judges on the work of its fourth meeting
ICC-ASP/13/L.10	Part I: [Draft] Proceedings
ICC-ASP/13/L.11	[Draft] Report of the Credentials Committee
ICC-ASP/13/L.12	[Draft] Resolution on permanent premises
ICC-ASP/13/L.12/Rev.1	[Draft] Resolution on permanent premises
ICC-ASP/13/L.13	[Draft] Decision: Waiver of the impediment of four members of the Advisory Committee on Nominations of Judges to be re-elected
ICC-ASP/13/L.14	[Draft] Report of the Chair of the Oversight Committee

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