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Report on the activities of the Oversight Committee

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Executive Summary

The Committee was informed that the total estimated costs of the project amount to €213.3 million. This cost figure is composed of a maximum of €205.75 million for the construction and transition projects and an estimated figure of €7.5 million from the regular annual budgets of the Court.

The one-time payments received from 62 States Parties amount to €94,568,303.0, of which overpayments received amount to €1,849,015.0.

The Committee also took note that the interest accrued over the years on the funds of the permanent premises project, essentially the result of interest accrued from the one-time payments, amounts to €553,326 and submits a recommendation thereon.

At the Committee's 5 April 2016 meeting, the Project Director informed the Committee that the general contractor was considering bringing several rejected compensation events to adjudication, and possibly arbitration. At its 26 April 2016 meeting, the Project Director informed the Committee that Courty's proposal was to settle all previously rejected compensation events - including the claim of €1.5 million (pending since 2014), relating to security classification - for €700,000. Courty further demanded an additional amount of €300,000 for other outstanding issues, and was not ready to accept the delay penalty of €600,000. As a result, as at 11 April 2016 the cost overrun over the €204 budget envelope in the best- and worst-case scenarios was estimated at approximately €1.5 and €1.7 million, respectively.

At its 23 June 2016 meeting, the Project Director informed the Committee that a draft agreement to settle the outstanding financial issues had been reached with the general contractor, bringing the total cost of the project to €205.75 million. The project thus exceeded the budget envelope authorized by the Assembly by €1.75 million. The Project Director further informed the Committee that the additional €1.75 million were to be paid at the end of 2016, after the fifteenth session of the Assembly.

The Committee requested the Assembly to consider at its upcoming session, the reallocation of unspent resources from the Court's 2016 budget to cover the overrun above the figure of €204 million, which the Assembly had authorized in resolution ICC-ASP/14/Res.5, with a view to allowing the finalization of the signature and execution of the draft settlement agreement without requiring additional financial contributions from States Parties, subject to the approval by the Assembly of such excess of the current budget envelope of €204 million.

With regard to the establishment of a new governance structure for the permanent premises and the total cost of ownership, the Committee remains seized of the matter and will submit its proposals to the Bureau.

I. Introduction

1. At its sixth session (2007) the Assembly of States Parties established an Oversight Committee (the “Committee”) as a subsidiary body of the Assembly to provide strategic oversight for the permanent premises project.¹
2. The present report is submitted in accordance with resolution ICC-ASP/6/Res.1, annex II, paragraph 14, which provides that the Oversight Committee shall provide regular progress reports to the Committee on Budget and Finance prior to its meetings and shall submit for advice any submissions with financial implications for the Assembly.
3. Since the fourteenth session of the Assembly held in November 2015, the Oversight Committee has held eleven meetings: on 25 January, 23 February, 17 March, 5 and 26 April, 19 May, 23 June, 21 July, 7 September, 14 October and 4 November 2016. The meetings were also attended by observer States.
4. At its fourteenth session, the Assembly filled five out of ten seats of the Oversight Committee and tasked the Bureau to fill the remaining vacant seats.² As at 17 March 2016, the Bureau appointed three additional members. On 15 April 2016, Slovenia was appointed by the Bureau to fill the vacancy for the Eastern European Group. As at 7 September 2016, the Committee has nine members: Canada, Chile, Ecuador, France, Germany, Japan, Norway, the Republic of Korea and Slovenia. One seat for the African Group remains vacant.
5. On 26 January 2016, the Committee elected H.E. Mr. Laurent Pic (France), as Chair of the Committee. As Ambassador Pic’s posting in the Netherlands ended in February, the Committee at its 5 April 2016 meeting, appointed H.E. Ms. Sabine Nölke (Canada), as Chair of the Oversight Committee. Ms. Diarra Dime-Labille (France) who acted as Chair of the Committee in the interim period, was appointed as Vice-Chair on 7 April 2016.
6. The Project Director, Mr. Kenneth Jeavons (United Kingdom), resigned on 17 December 2015, effective on 29 February 2016. The Committee, in consultation with the Court and the host State, appointed a new Project Director, Mr. Philip Dubbeling (Netherlands), who entered on duty on 21 March 2016.
7. The official opening ceremony of the permanent premises took place on 19 April 2016.³ The Committee expresses its appreciation to the Municipality of The Hague for the important contribution to this memorable event.

II. Overview of the status and cost of the unified project

A. Status and cost of the unified project

1. Status of the project

(a) Timelines

8. The construction project includes the guarantee period that will run up to one year after the handing over of the premises by the general contractor to the Court, which has taken place on 2 November 2015. Thus, until 1 November 2016 there is an amount of €737,500 (known as “retainer”), which the Court would not pay to the contractor until defects identified are solved or the guarantee period has expired.

(b) Budget

9. The unified project budget authorization developed as follows:

¹ Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November - 14 December 2007 (ICC-ASP/6/20), vol. I, part III, ICC-ASP/6/Res.1, para. 5 and annex II.

² Official Records ... Fourteenth session ... 2015 (ICC-ASP/14/20), vol. I, part III, ICC-ASP/14/Res.5, para. 73.

³ See press release ICC-CPI-20160419-PR1208 from 19 April 2016.

- 2013 = €195.7 million, of which €184.4 for construction and €11.3 for transition;⁴
- 2014 = €200 million (delegation of authority to the Committee to increase by €4.3 million);⁵ and
- 2015 = €206 million, with end project expenditures at €204 million (provided that the NEC 3 contract sharing mechanisms will produce the expected results).⁶

(c) *Review of the External Auditor of the project accounts*

10. In accordance with resolution ICC-ASP/13/Res.6, paragraph 10, the External Auditor carried out a review of the project accounts with emphasis on the cost overruns. States Parties received the report in its original French version on 18 March 2016 and in its English translation on 29 March.

11. On 18 April 2016 the report of the External Auditor on the cost overrun was considered at a Bureau meeting open to all States Parties. The report was introduced by the External Auditor, and the Chair of the Committee gave an update on the developments and issues under consideration in the Committee in this regard.

12. When considering the report, the Committee considered the following issues:

(a) The Committee had an exchange on the issue of contingency reserve. The auditors, in their report, had identified the lack of budgetary prudence regarding the contingency reserve as a weak point of the project, inferring that if the contingency reserve had not been reduced at the beginning of the project and the budget would have been increased to pay for some of the changes, there would not have been an overrun. However, the Committee recalled that the reserves had been reduced at the time upon the proposal of the Project Director's Office, which had assured the Committee that the project could be completed within the assigned budget.

(b) The Committee noted the report's conclusion that the cost overrun was minor by reference to the overruns commonly observed in construction projects of this size.

13. The Committee also took note that the audit report on the financial reporting and management of the permanent premises project for the 2015 financial year was contained in document ICC-ASP/15/12.

(d) *Cost overrun over the authorized budget of €204 million*

14. The Committee, at its 25 January 2016 meeting, noted that the monthly progress report of the Project Director's Office as at 31 December 2015 on the financial status of the construction and transition projects had been the first financial report in which the best-case scenario exceeded the €204 million threshold. The 15 February 2016 progress report indicated an estimated cost overrun of €788,279 in the best-case and of €1,498,191 million in the worst-case scenario, excluding a claim by Courtys of an additional €1.5 million, reported since November 2014 and rejected by the Project Director's Office, against the unified project budget of €204 million, thereby exceeding the budget approved for the project.

15. The Committee, at its 25 January and 23 February 2016 meetings, recalled resolutions ICC-ASP/13/Res.6 and ICC-ASP/14/Res.5 in which the Assembly set the budget for the unified project at €206 million and at the expected expenditure level of €204 million. The Committee further recalled that the unified project budget or the expected expenditure level could only be increased through an explicit decision of the Assembly of States Parties and that therefore the decisions on both ceilings taken in resolutions ICC-ASP/13/Res.6 and ICC-ASP/14/Res.5 remained legally binding. Any potential further decision was the competence of the Assembly. The Committee clarified that any costs

⁴ Official Records ... Twelfth session ... 2013 (ICC-ASP/12/20), vol. I, part III, ICC-ASP/12/Res.2, para. 15.

⁵ Official Records ... Thirteenth session ... 2014 (ICC-ASP/13/20), vol. I, part III, ICC-ASP/13/Res.2, para. 17.

⁶ Ibid., ICC-ASP/13/Res.6, para. 2.

above the expected expenditure level of €204 million may not be financed through the unified project budget. The Committee's decisions in this regard, taken at its 25 January 2016 meeting, were conveyed to the Court, the Project Director's Office, the Bureau and its Working Groups on 27 January 2016.

16. In addition, the Committee sent a letter to the Court's principals, dated 9 March 2016, recalling the Committee's decisions of its first and second meetings, concluding, that as a consequence, any costs above the expected expenditure level of €204 million may not be financed through the unified project budget and that therefore, as highlighted at the Committee's second meeting, the Court shall be responsible for absorbing the cost overrun above €204 million within its regular budget.

17. At the Committee's 5 April 2016 meeting, the Project Director informed the Committee that the general contractor was considering bringing several rejected compensation events to adjudication, and possibly arbitration. In order to avoid such a lengthy procedure with an uncertain outcome, he requested the Committee to mandate his office to negotiate a settlement with Courty's, which was estimated to be reached on the amount of approximately €700,000. This amount would be in addition to the cost of the project indicated in the progress report that is estimated at €204,779,731 in the best- and at €204,960,461 in the worst-case scenario (taking into account the reserve of €524,800 of the transition project in the worst-case scenario, which will not be disbursed). The Project Director indicated that the settlement would therewith bring the total project costs to an amount of approximately €205.7 million.

18. The Committee pointed out that the Project Director's Office did not need a mandate to negotiate with Courty's, as this was included in its mandate already. However, the Committee stressed again that it was not mandated to authorize any amount exceeding the threshold of €204 million, as this was a decision falling within the competence of the Assembly.

19. At its 26 April 2016 meeting, the Project Director informed the Committee that Courty's proposal was to settle all previously rejected compensation events - including the claim of €1.5 million (pending since 2014), relating to security classification - for €700,000. Courty's further demanded an additional amount of €300,000 for other outstanding issues, and was not ready to accept the delay penalty of €600,000.

20. As a result of the above, as at 11 April 2016 the cost overrun over the €204 budget envelope in the best- and worst-case scenarios was estimated at approximately €1.5 and €1.7 million, respectively. The Project Director explained that the proposal of Courty's to settle all rejected compensation events for €0.7 million was included in the figures of the progress report (€0.5 million in the best-case scenario and €0.7 million in the worst-case scenario). The Project Director clarified that both in the best-case and worst-case scenarios, there was an additional potential dispute on costs around €900,000 (€600,000 from the delay penalty plus €300,000 for other claims).

21. Upon request by the Committee, the progress report was presented in a new structure: as at 16 May 2016, the progress report no longer contained a best- and worst-case scenario but a "realistic" scenario. The "realistic" scenario indicated a cost overrun of €1,689,825, not taking into account the pending financial issues over a maximum amount of €900,000, which replaced the previous long-standing Courty's claim in the amount of €1.5 million related to security classification.

(e) *Settlement of outstanding financial costs*

22. Considering that the figures being negotiated exceeded the authorized budget envelope of €204 million, the Project Director requested the Committee's guidance on how to make a firm financial offer to the contractor. Against the background of the Chairperson's discussions with representatives of the Court on where to allocate funds within the regular budget of the Court for the cost overrun, the Chair asserted that the Project Director could continue the negotiations over an amount not officially authorized by the Assembly, as the Committee could be confident that the additional funds would be found within the regular budget of the Court. Committee members recalled that the Committee had already in January decided that it could not authorize an increase of the

unified project budget or the expected expenditure level of €204 million. Committee members also underlined that as long as there was no clear indication on the exact final numbers, the Committee was not in a position to provide any guidance on the funding.

23. At its 23 June 2016 meeting, the Project Director informed the Committee that a draft agreement to settle the outstanding financial issues had been reached with the general contractor, bringing the total cost of the project to €205.75 million. The project thus exceeded the budget envelope authorized by the Assembly by €1.75 million. The Project Director further informed the Committee that the additional €1.75 million were to be paid at the end of 2016, after the fifteenth session of the Assembly.

24. The Committee and the Project Director agreed that the draft settlement letter, once finalized, would be sent to the Committee members, along with an accompanying paper containing information on the cost developments prepared by the Project Director's Office.

25. On 1 July 2016, the Committee considered the draft settlement letter with a non-objection period of three working days prior to signature by the Court's Registrar, the Project Director, and the Project Manager. Several States objected to endorsing the draft settlement letter.⁷

26. The Oversight Committee continued with its consideration of the matter at its 21 July 2016 meeting. After informal consultations among its members, the Committee reached an agreement on 16 August 2016. The operative part of that decision reads as follows:⁸

The Committee

Takes note of the draft settlement agreement and the expert advice it has received thereon;

Requests the Project Director to convey to the general contractor in writing the understanding that the conclusion and execution of the settlement agreement requires the consent of the Assembly, and that in the absence of such consent the settlement agreement could be set aside;

Requests the Assembly to consider at its upcoming session, the reallocation of unspent resources from its 2016 budget to cover the overrun above the figure of €204 million, which the Assembly had authorized in resolution ICC-ASP/14/Res.5, with a view to allowing the finalization of the signature and execution of the draft settlement agreement without requiring additional financial contributions from States Parties, subject to the approval by the Assembly of such excess of the current budget envelope of €204 million.

Recommends that the Assembly grants due priority to this matter, at its upcoming session.

(f) *Total project costs*

27. The draft agreement to settle the outstanding financial issues with the general contractor Courts brought the total cost of the project to €205.75 million. The project thus exceeded the budget envelope authorized by the Assembly by €1.75 million.⁹

B. Financing

1. Financing of the additional cost overrun

28. The Registrar informed the Committee at its 23 June 2016 meeting that the Court's three heads of organs had agreed to absorb the cost overrun, as requested by the Committee in its 9 March 2016 letter. To do so, the Court committed itself to having a budget implementation rate no higher than 98.5 per cent, with a view to have €1.75 million

⁷ See statement by France contained in annex IX of this report.

⁸ The full text of the decision is reflected in annex VI.

⁹ €0.75 million as a result of the negotiation, plus €1 million previously reported in the worst case scenario since December 2015 as a result of additional compensation events needed since Completion.

available in the 2016 regular budget to cover the project cost overrun. The Registrar, however, highlighted that the Financial Regulations and Rules did not allow the Court to decide to use the budget for other purposes than those authorized by the Assembly. This issue could be resolved if the Assembly, at its fifteenth session, would authorize the Court, in the framework of the budget resolution, to use the regular programme budget to finance the cost overrun. The Registrar further requested States to keep in mind that the use of the budget surplus for the permanent premises cost overrun would limit the Court's capacity to absorb any possible recourse to the Contingency Fund via the Court's regular budget in 2016: if the Court thus had to use the Contingency Fund resources, then the Assembly would have to consider the issue of replenishing the Contingency Fund.

29. The Committee welcomed the Court's willingness to absorb the cost overrun within its regular budget and requested the Court to regularly and transparently inform States Parties in the framework of the budget negotiations on any aspects concerning the budget implementation and the repercussions on the Contingency Fund.

2. Host State loan

30. At its fourteenth session, the Assembly acknowledged that a financial gap, estimated to be up to €3.5 million, had arisen between the reduction of the loan under the loan agreement and the discount applied to States Parties making one-time payments, based on the resolutions of the Assembly. The Assembly also acknowledged with appreciation the offer of the host State to bridge the financial gap up to €3.5 million, as a political solution, with an additional contribution.¹⁰ The host State transferred €3.5 million to the Court on 18 December 2015.¹¹

III. Ownership of the permanent premises

A. Ownership interests

31. At its fourteenth session, the Assembly welcomed the Committee's proposal that matters related to the enhanced access of States Parties to the permanent premises and the use thereof be addressed through consultations between the appropriate organs of the Assembly and the Court. The Assembly further took note that in the future the most appropriate entry-point for these and any other States' related matters may be identified by the Assembly, also taking into account the mandate of the new governance structure.¹²

B. Governing structure

32. At its fourteenth session, the Assembly invited the Bureau 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.¹³ The Committee considered this issue at several meetings, as it is of the view that submitting its views to the Bureau on the topic would be helpful.

33. The Committee agreed that the set-up of the new government structure should take into account lessons learned of the Committee's experience. In the same vein it was emphasized that optimal use should be made of the knowledge and competence of Committee members.

34. While some felt strongly that States Parties should be part of any future governance body, others were not convinced any committee was needed at all, as the management should be dealt with by the Registry. However, Committee members agreed that States Parties need to exercise oversight over any financial implications of the management of the permanent premises and that it would best be exercised by The Hague Working Group, or, if necessary, a subcommittee thereof as no special or permanent committee was needed.

¹⁰ *Official Records ... Fourteenth session ... 2015*, (ICC-ASP/14/20), part III, ICC-ASP/14/Res.5, paras. 34-35.

¹¹ See paragraph 62 of this report.

¹² *Ibid.*, paras. 50-52.

¹³ *Official Records ... Fourteenth session ... 2015*, (ICC-ASP/14/20), part III, ICC-ASP/14/Res.5, paras. 56-59.

35. Some committee members were of the view that it was crucial to have clear and comprehensive terms of reference, with clearly distributed competencies and responsibilities, to avoid some of the challenges the Committee had experienced. Some committee members further agreed that, while it was for the Bureau to draft terms of reference for any future committee, it would make recommendations to the Bureau on elements to include, such as on the composition, the kind of oversight required and the role of the host State. It was pointed out that the Court should necessarily be involved in the drafting of the terms of reference.

36. The Committee submits its proposals to the Bureau (annex VIII).

C. Total cost of ownership

37. The Assembly requested the Committee to operationalize all aspects of the strategy on the Total Cost of Ownership contained in its report.¹⁴ The Committee started an exchange of views on this issue, taking into account the Decision on Total Cost of Ownership contained in annex II of resolution ICC-ASP/14/Res.5.

38. The Committee considered this issue at several meetings. Committee members saw annex II as providing some important guidance. However, some of the proposals were considered somewhat rigid in structure and doubts were raised if the figures presented were sensible. It was highlighted that the figures would need to be re-assessed based on the day to day operations and together with the Registry's input. Ultimately, the Assembly would need to decide whether to opt for one of the models proposed in annex II and if so to create a fund and determine its size. Should the Assembly decide to build up a large fund, the role of the governance committee would include the management of this fund. Committee members highlighted that such extraordinary investment would call for States Parties' oversight. However, should the Assembly refrain from the establishment of a fund, the governance committee's role would also be limited in this regard. Committee members concurred that they were hesitant to propose any large scale fund, as it was questionable if States Parties would agree to large contributions in addition to the regular budget.

39. The Committee considers that the issue of the total cost of ownership is closely linked with that of the governance structure. The Committee remains seized of the matter and will submit its recommendations to the Bureau.

40. The Committee considered the views which the Committee on Budget and Finance made at its twenty-seventh session.¹⁵ In this regard, the Committee submits its proposals to the Bureau (annex VIII).

IV. Other matters

41. The Committee took note that the interest accrued over the years on the funds of the permanent premises project, essentially the result of interest accrued from the one-time payments, amounts to €553,326.¹⁶

42. In this connection, the Committee accepted recommendations of the Committee on Budget and Finance at its twenty-seventh session.¹⁷

43. The Committee recommended that like in the previous year new States Parties shall be assessed contributions against the total cost of the permanent premises whereby one delegation expressed concerns that this contribution might be burdensome for some acceding States Parties and recommended that a decision should be taken on an individual basis at the time of the accession. Other delegations expressed concern that this would reopen a carefully balanced text, and indicated a strong preference for retention of the existing language.

¹⁴ Ibid, para. 69.

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

¹⁶ The Court informed that the amount of € 553,326 represents cumulative interest accrued on permanent premises project funds by the end of 2015. Additional interest accrued in 2016 would be negligible, at the current rates, and only known at the end of 2016.

¹⁷ Ibid., para 236.

V. Financial reporting¹⁸

A. Project expenditure

1. Appropriation for construction and transition budgets

44. The construction costs were initially set by the Assembly at no more than €190 million at 2014 prices.¹⁹ 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.

45. The unification of the construction and transition projects enabled the PDO to better manage transition costs, including the cost of non-integrated user equipment (and excluding the Court's staff costs), set them at €11.3 million (down from the approved maximum €19.8 million²⁰), and partly fund them through the savings identified in the construction budget (€5.6 million).²¹ The remaining €5.7 would be financed from the Court's surpluses from the 2012 to 2014 budgets.²² An amount of €4.47 million pertaining to the 2012 surplus²³ was transferred to the project in April 2014. However, no surpluses were available in 2013 and 2014.

46. The construction budget of €184.4 million together with the transition budget of €11.3 million would be financed under the overall unified project budget of €195.7 million. Additional funding (€4.3 million) was approved by the Assembly of States Parties in December 2014.²⁴

47. In June 2015, the Assembly authorized an increase of the unified budget envelope in the amount of €6 million, bringing the total project budget to €206 million, of which €1,993,524 would not be disbursed if the sharing mechanism of the contract with the General Contractor produced such result.²⁵

48. The total appropriation as at 15 October 2016 is €205,750,000 at 2016 price level, subject to the approval by the Assembly of States Parties of the draft settlement negotiated by the Project Director's Office with the construction company, Courty's. The budget appropriations and actual expenditures as at 15 October 2016 for both the construction and transition projects are further detailed in annex I to this report.

2. Expenditures against the construction and transition budgets

49. The expenditures during 2016 for the construction and transition projects as at 15 October 2016 amount to € 4,667.2 thousand.

50. The total expenditures for the project (from 2008 until 15 October 2016) amount to €203,648,360, of which €193,089,801 in the construction project, and €10,558,559 in the transition project. Further details are presented in annex I.

3. Expenditures against the Court's annual budget

51. The expenditures on Major Programme VII-1 Project Director's Office (permanent premises), for the period 2008 until 15 October 2016 (expressed in thousands of euro) amounts to € 5,523.4 broken down as follows: €83.8 in 2008, €317.4 in 2009, €395.4 in

¹⁸ This section was prepared by the Project Director's Office.

¹⁹ Resolution ICC-ASP/6/Res. 1, preambular paragraph 10.

²⁰ ICC-ASP/10/Res.6, paragraphs 3 and 5.

²¹ Report on the activities of the Oversight Committee, Addendum, ICC-ASP/12/43/Add.1.

²² Resolution ICC-ASP/12/Res.2, annex II, Amendment to the Financial Regulations and Rules – Use of surplus, Regulation 4.7.

²³ Resolution ICC-ASP/12/Res.2, paragraph 20. As a first implementation of the amendment of Regulation 4.7 approved, the Assembly also approved that an amount equal to the 2012 surplus was appropriated to funding the overall project budget; CBF/22/15, paragraph 17 and annex 4.

²⁴ Resolution ICC-ASP/13/Res.2, para. 17.

²⁵ Resolution ICC-ASP/13/Res.6, para. 2.

2010, €386.4 in 2011, and €586.7²⁶ in 2012, €998.4 for 2013, €1,235.2 for 2014, €1,068.4 for 2015 and € 181.7 for 2016 as at 15 October 2016. Further details are presented in annex II.

52. Following the decision of the Committee to adopt the revised governance structure in agreement with the Registrar, the budget for sub-programme 3770 ceased to exist at the end of 2013 and the staff and activities of sub-programme 3770 were fully incorporated into Major Programme VII-1. Expenditures for this sub-programme from 2008 until 2013 amounted to €2,021.2 million.

53. Major Programme VII-1, Project Director's Office, will cease to exist at the end of 2016.

4. Total projected cost of the project: construction and transition budget, plus the Court's budget (permanent premises)

54. The revision of the financial framework has resulted in creating clarification on the full cost impact of the project, through identifying the costs related to the project that are funded via the annual budget of the Court and those that are funded through the construction and transition budgets.

55. Annex III provides an estimate of the full costs related to the project for the period 2008 until 2016, including former sub-programme 3770. The total estimated costs amount to €213.3 million. This cost figure is composed of a maximum of €205.75 million for the construction and transition projects and an estimated figure of €7.5 million from the regular annual budgets of the Court.

56. The €7.5 million in the Court's annual budgets include Major Programme VII-1 and former sub-programme 3770.

5. Cash-flow projection

57. Annex IV details the cash-flow projection overview.

58. The interest accrued in 2015 on the host State loan amounted to € 2,185,717.00. This amount was paid to the host State in early 2016 in accordance with the provisions of the Loan Agreement.

59. The cash-flow overview provided in annex IV to this report shows that additional funding for the construction and transition budgets is needed during 2016 and in 2017.

6. Trust fund

60. A trust fund was established by the Registrar, in accordance with resolution ICC-ASP/6/Res.1, annex VI, for the purpose of holding funds dedicated to the construction of the permanent premises of the Court. No voluntary contributions from governments, international organizations, individuals, corporations or other entities have been received.

B. One-time payments

61. As at 31 December 2014, 65 States Parties had selected the one-time payment option and pledged to make payments to a value of €92,983,405. The one-time payments actually received from 62 States Parties amount to €94,568,303.0, of which overpayments received amount to €1,849,015.0. Further details are provided in annex V to this report. The Assembly decided on the disposition of these overpayments, in operative paragraph 67(d) of resolution ICC-ASP/14/Res.5.²⁷

62. In implementation of resolution ICC-ASP/14/Res.5, paragraph 35, adopted on 26 November 2015, the host State and the Court signed a Memorandum of Understanding,

²⁶ Increase due to the merger of the Project Director's Office and the POPP.

²⁷ "Surplus deriving from overpayment of contributions in the permanent premises shall offset future contributions due by the same States Parties against the long-term capital replacement costs", operative paragraph 67(d) of resolution ICC-ASP/14/Res.5.

on 16 December 2015, regarding the host State Additional Contribution. The host State transferred €3.5 million to the Court on 18 December 2015. The MoU included the host State offer that should the financial gap be in effect less than €3.5 million, the Court would use the surplus towards redemption of the Loan, with the effect of reducing the contributions for States Parties participating in the loan from the Expiry Date onwards, in accordance with the Loan Agreement. The one-time payment gap, after the 29 June 2016 deadline expired, was €3,118,225. The surplus of the voluntary additional contribution was €381,775. The host State also agreed to grant the 17.5 per cent discount on the voluntary contribution, i.e. an additional €545,689.

Annex I

Summary financial total overview up to 15 October 2016

	<i>Budget</i>		<i>SAP Budget execution</i>			<i>Provisions</i>			
	<i>Budget approved by ASP</i>	<i>Budget approved for spending by OC</i>	<i>Budget closing position</i>	<i>SAP paid to date</i>	<i>SAP PO to date</i>	<i>SAP total execution</i>	<i>Obligated not in SAP yet</i>	<i>Still to obligate</i>	<i>Total cost worst case</i>
Construction cost									
Form of Agreement (excluding AV)			140,307,200	737,500	141,044,700	0	0	0	141,044,700
Share part ICC NEC3 contract			0	0	0	0	0	0	0
AV			9,234,881	107,648	9,342,529	0	0	0	9,342,529
Construction others			1,710,294	0	1,710,294	0	0	0	1,710,294
Risk	12,046,231	0	12,046,231	17,701,101	837,393	18,538,493	0	14,500	18,552,993
Permits& Dues	2,549,526	0	2,549,526	2,560,699	0	2,560,699	0	0	2,560,699
Fees	20,492,188	0	20,492,188	20,087,126	37,959	20,125,085	0	0	20,125,085
Other Cost	1,500,000	0	1,500,000	1,488,500	0	1,488,500	0	0	1,488,500
Additional budget	0	8,300,000	8,300,000	0	0	0	0	0	0
<i>Subtotal construction</i>	<i>184,347,645</i>	<i>8,300,000</i>	<i>192,647,645</i>	<i>193,089,801</i>	<i>1,720,499</i>	<i>194,810,300</i>	<i>0</i>	<i>14,500</i>	<i>194,824,800</i>
Transition									
Construction cost transition	1,067,355	0	1,067,355	3,196,450	-	3,196,450	0	0	3,196,450
Fees transition	3,450,820	0	3,450,820	2,619,145	142,632	2,761,777	0	49,810	2,811,587
Equipment transition	6,834,180	0	6,834,180	4,742,965	78,992	4,821,957	0	95,207	4,917,163
Reserve	0	0	0	-	-	-	0	0	0
<i>Subtotal transition</i>	<i>11,352,355</i>	<i>0</i>	<i>11,352,355</i>	<i>10,558,559</i>	<i>221,624</i>	<i>10,780,183</i>	<i>0</i>	<i>145,017</i>	<i>10,925,199</i>
Consolidated	195,700,000	8,300,000	204,000,000	203,648,360	1,942,123	205,590,484	0	159,517	205,750,000

Annex II

Expenditures and future projected budgets for Major Programme VII-1 (Project Director's Office) per 15 October 2016 (in thousands of euro)

7110 and 7120 Project Director's Office (permanent premises)	Actual expenditure 2008	Actual expenditure 2009	Actual expenditure 2010	Actual expenditure 2011	Actual expenditure 2012	Actual expenditure 2013	Actual expenditure 2014	Actual expenditure 2015	Approved budget 2016 (**)	Actual expenditure per 15.10.2016	Actual Impl. Rate in %	Anticipated expenditure 2016	Total 2008- 2016 (*)(**)
Professional staff													
General Service staff													
<i>Subtotal staff</i>	48.3	266.6	315.6	321.5	352.4	599.0	654.2	423.0	210.9	157.9	74.9%	210.9	3,191.5
General temporary assistance	16.8	26.4	9.7	37.2	74.7	353.0	483.3	0.0	0.0	0.0	0.0	0.0	1,001.1
Consultants									0.0			0.0	-
<i>Subtotal other staff</i>	16.8	26.4	9.7	37.2	74.7	353.0	483.3	0.0	0.0	0.0	0.0	0.0	1,001.1
Travel	0.5	4.4	14.9	19.3	6.4	10.2	25.8	10.6	2.8	0.0	0%	2.8	95.0
Hospitality	5.7	8.6	2.8	4.2	1.5	0.4		2.6	0.0	0%	2.6	25.8	
Contractual services	35.0	2.1	9.4	28.2	148.1	309.7	187.9	119.0	232.0	22.0	9%	226.7	1,066.1
Training				3.2	36.5	0.0	13.6	8.6	0.0	1.8	-	5.3	67.3
General operating expenses	9.9	20.0	0.0	0.0	0.0	0.0	0.0	0.0	2.5	0.0	0%	2.5	32.4
Supplies and materials				1.1	0.0	0.0	0.2	0.4	1.0	0.0	0%	1.0	2.6
Furniture and equipment	11.9	0.5	0.6	1.8	3.3	0.0	23.5	0.0	0.0	-	0.0	0.0	41.7
<i>Subtotal non-staff</i>	35.5	34.0	53.4	55.2	197.1	324.7	228.0	162.1	240.9	23.8	0.2%	240.9	1,330.9
Total	83.8	317.4	395.4	386.4	586.7	998.4	1235.2	1068.4	451.8	181.7		451.8	5,523.4

(*) Proposed budgets and subject to change.

(**) As of 2014 programme 7110 incorporates the former sub-programme 3770.

(***) As of 2014 programme 7130, previously known as "2gv" costs is incorporated in the increased multi-annual construction budget.

Annex III

Total projected cost of the permanent premises project per 15 October 2016 (in thousands of euro) - Expenditures and future cost permanent premises project

	<i>Actual expenditure 2008</i>	<i>Actual expenditure 2009</i>	<i>Actual expenditure 2010</i>	<i>Actual expenditures 2011</i>	<i>Actual expenditure 2012</i>	<i>Actual expenditure 2013</i>	<i>Actual expenditure 2014</i>	<i>Actual expenditure 2015</i>	<i>Approved budget 2016</i>	<i>expenditure per 15.10.2016</i>	<i>Anticipated expenditure 2016</i>	<i>Total (estimated) 2008-2016</i>
Unified project budget (multi-annual budget)												
Revised total unified project budget, including 3gv and 2gv costs (195,715 k€) + 4,300 k €+ 4.000 mio = 204,000 k € as per ASP res June 2015												
-	1,279.5	5,133.3	6,873.4	8,566.5	37,300.9	84,017.0	55,810.5	6,768.8	4,667.2	6,768.8	205,750.0	
Total unified project budget												205,750.0
Annual budget												
<i>Major Programme VII-I</i>	83.8	317.4	395.4	386.4	586.7	998.4	1,235.2	1,068.4	451.8	181.7	451.8	5,523.4
Programme 7110 - Project Director's Office	83.8	317.4	395.4	386.4	421.8	782.6	695.8	477.0	245.8	165.7	245.8	3,806.0
Programme 7120 - ICC Staff Resources and management support (**)	0.0	0.0	0.0	0.0	113.9	215.8	539.5	591.4	206.0	16.0	206.0	1,666.6
Programme 7130 - 2gv elements (non-integrated user equipment) (***)	0.0	0.0	0.0	0.0	50.9	0.0	0.0	0.0	0.0	0.0	0.0	50.8
<i>Sub-programme 3770 - Registry Permanent Premises Office</i>	268.2	260.9	381.4	379.8	407.4	323.4	0.0	0.0	0.0	0.0	0.0	2,021.2
Total annual budget												7,544.6
Estimated Grand Total 2008 - 2016												213,294.6

(*) Proposed budgets and subject to change
 (**) As of 2014 programme 7110 incorporates the former sub-programme 3770
 (***) As of 2014 programme 7130, previously known as "2gv" costs is incorporated in the increased multi-annual construction budget

Annex IV

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

Annex V

Status of One-time payments (in euros) as at 29 June 2016

#	State Party	OTP Pledged	OTP Received by deadline	OTP Unpaid pledge - Host State Loan	OTP Overpaid
1	Albania	24,645	24,645	-	-
2	Andorra	19,685	19,685	-	-
3	Antigua and Barbuda	4,960	1,741	3,219	-
4	Argentina	1,064,075	1,068,835	-	4,760
5	Australia	5,108,800	5,108,955	-	155
6	Barbados	19,685	19,685	-	-
7	Benin	7,440	-	7,440	-
8	Bolivia	22,165	22,165	-	-
9	Bosnia & Herzegovina	41,849	41,850	-	1
10	Burkina Faso	7,440	4,576	2,864	-
11	Cambodia	9,920	2,288	7,632	-
12	Canada	7,350,409	7,350,410	-	1
13	Chad	4,960	2,281	2,679	-
14	Chile	822,740	822,740	-	-
15	Colombia	637,980	637,980	-	-
16	Costa Rica	93,620	93,620	-	-
17	Cyprus	115,785	115,785	-	-
18	Czech Republic	950,769	950,770	-	1
19	Democratic Republic of the Congo	7,440	6,864	576	-
20	Denmark	1,662,685	1,662,685	-	-
21	Djibouti	2,480	-	2,480	-
22	Ecuador	108,345	108,345	-	-
23	Estonia	98,580	98,580	-	-
24	Finland	1,278,440	1,290,503	-	12,063
25	Gabon	49,289	18,220	31,069	-
26	Georgia	17,205	17,205	-	-
27	Germany	17,590,175	17,590,485	-	310
28	Greece	1,571,545	1,571,545	-	-
29	Hungary	655,185	558,303	96,882	-
30	Iceland	66,495	84,661	-	18,166
31	Ireland	1,029,665	1,029,665	-	-
32	Italy	10,956,640	11,621,392	-	664,752
33	Jordan	54,249	54,250	-	1
34	Latvia	115,785	115,785	-	-
35	Liechtenstein	22,165	22,881	-	716
36	Lithuania	179,800	179,800	-	-
37	Luxembourg	199,485	199,485	-	-
38	Malta	39,369	39,370	-	1
39	Mauritius	32,085	32,085	-	-
40	Mexico	4,537,315	5,164,300	-	626,985
41	Mongolia	7,440	7,440	-	-
42	Montenegro	12,245	12,245	-	-
43	Namibia	24,645	24,645	-	-
44	Netherlands	4,074,175	4,272,802	-	198,627
45	Panama	64,015	51,038	12,977	-
46	Philippines	379,285	379,413	-	128
47	Poland	2,268,735	2,268,735	-	-
48	Portugal	1,167,615	1,205,842	-	38,227
49	Republic of Korea	913,567	913,567	-	-
50	Republic of Moldova	7,440	7,440	-	-
51	Romania	556,760	556,760	-	-
52	Samoa	2,480	2,480	-	-
53	San Marino	7,440	7,440	-	-
54	Serbia	98,580	98,580	-	-
55	Slovakia	421,289	421,290	-	1
56	Slovenia	246,295	246,295	-	-
57	South Africa	916,360	916,360	-	-
58	Spain	7,323,285	7,323,898	-	613
59	Suriname	9,920	2,281	7,639	-
60	Sweden	2,364,680	2,450,583	-	85,903
61	Switzerland	2,579,045	2,774,014	-	194,969
62	Timor-Leste	4,960	4,960	-	-
63	Trinidad and Tobago	108,345	108,345	-	-
64	Tunisia	88,660	-	88,660	-
65	United Kingdom	12,754,795	12,757,430	-	2,635
Total		92,983,405	94,568,303	264,117	1,849,015

Annex VI

Decision on the draft settlement agreement with the general contractor Courty's

Acting within its mandate to act on behalf of the Assembly as its subsidiary body in the construction of the permanent premises and its role of providing strategic oversight over the permanent premises project¹ with a view to considering the best options available for all States Parties;

Recalling resolutions ICC-ASP/13/Res.6 and ICC-ASP/14/Res.5 in which the Assembly, following a series of prior cost overruns in the permanent premises project, set the budget ceiling for the unified project at €206 million and at the expected expenditure level of €204 million;

Having been informed by the Project Director that there would be additional cost overruns resulting from unforeseen expenditures in areas of direct importance for the completion of the project, as well as claims by the general contractor, Courty's, in respect of compensation events previously rejected by the Project Director's Office;

Having been further informed that the Project Director's Office had engaged in substantive negotiations with the general contractor, Courty's, with a view to achieving a final settlement of the project in the best interest of States Parties and the Court and with a view to avoiding potential dispute settlement proceedings;

Having been further informed by the Project Director at its 23 June 2016 meeting that he had reached a draft agreement to settle the outstanding financial issues with the general contractor, taking into account the aforementioned additional expenditures and outstanding claims and disputes, as well as penalties assessed under the contract against the contractor for delays in the handover of the permanent premises to the Court, bringing the total cost of the project to €205.75 million;

Having reviewed the draft agreement to settle the outstanding financial issues with the general contractor and *determined* that it would exceed the budget envelope authorized by the Assembly by €1.75 million, and upon professional advice received from the Project Director, the project manager – Brink Groep, and the expert retained by the Committee to advise it on technical matters, that the draft agreement represented the best possible outcome for States Parties as well as that it would remove a number of uncertainties and additional costs that would otherwise prevail in the project, including possible dispute resolution;

Having been informed further at its 23 June 2016 meeting by the Registrar that the Court's three heads of organs had agreed to absorb the cost overrun, as requested by the Committee in its 9 March 2016 letter, within its regular budget, from funds freed by the Court's rate of implementation of its allocated budget, which has historically hovered around 98 per cent of the allocated amount;

Aware that resolutions ICC-ASP/13/Res.6 and ICC-ASP/14/Res.5 are binding upon the Committee and that it cannot authorize any increase of the unified project budget or additional expenditure, nor any other funding requirements, and that this includes a draft settlement agreement resulting in financial liabilities;

Recalling that only the Assembly has the prerogative to authorize expenditures above the approved budget envelope and to determine the financing of such an increase; and

Noting that authorization by the Assembly is a condition precedent for the finalization of the signature and execution of the draft settlement agreement without requiring additional financial contributions from States Parties;

¹ ICC-ASP/6/Res.1, annex II, paras. 1-2.

The Committee

Takes note of the draft settlement agreement and the expert advice it has received thereon;

Requests the Project Director to convey to the general contractor in writing the understanding that the conclusion and execution of the settlement agreement requires the consent of the Assembly, and that in the absence of such consent the settlement agreement could be set aside;

Requests the Assembly to consider at its upcoming session, the reallocation of unspent resources from its 2016 budget to cover the overrun above the figure of €204 million, which the Assembly had authorized in resolution ICC-ASP/14/Res.5, with a view to allowing the finalization of the signature and execution of the draft settlement agreement without requiring additional financial contributions from States Parties, subject to the approval by the Assembly of such excess of the current budget envelope of €204 million; and

Recommends that the Assembly grants due priority to this matter, at its upcoming session.

Annex VII

Draft 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;

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

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.

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 Courty 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;

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;

⁵ ICC-ASP/14/33/Rev.1, annex IV.

⁶ CBF/26/12 and CBF/27/10.

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;

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

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

includes the full scope of the permanent premises project,¹³ and *takes note* of the recommendations contained in the Financial statements for the period 1 January to 31 December 2015;¹⁴

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;¹⁵

C. Governance structure

31. [Notes that the Oversight Committee has concluded its mandate;]

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 welcoming 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 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;

¹³ Official Records ... Eleventh session ... 2012 (ICC-ASP/11/20), vol. II, part B.2, para. 82.

¹⁴ Official Records ... Fifteenth session ... 2016 (ICC-ASP/15/20), vol. II, part C.1.

¹⁵ ICC-ASP/14/Res.5, annex IV.

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 ... Eleventh session ... 2012 (ICC-ASP/11/20), vol. II, part B.2.

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 annex thereto;

Appendix 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

Appendix 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

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..

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;

Annex VIII

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;

Annex IX

Statement by France to the Oversight Committee on the draft settlement agreement from 6 July 2016

Dear colleagues,

As a preliminary point, the French Government would like to recall that, in a letter transmitted to the Court in the course of last January, the Oversight Committee specified that it did not fall within its remit to authorize an increase in the Permanent Premises budget beyond what had already been approved by the Assembly of States Parties. Therefore, the French Government considers that it is not up to the Oversight Committee to make any legal determination about the agreement between the Court and the Contractor which was brought to our attention and it takes the view that this issue falls within the Assembly of States Parties' jurisdiction.

The French Government understands that:

- (a) Any lack of remarks or any remark made in relation to the documents submitted by the Project Director on July 1 do not constitute an authorization to the contract between the Court and Courty, nor consent to it, being understood that the documents were submitted for information ;
- (b) This contract is only valid between the Court and the contractor, and is not binding on States Parties;
- (c) It belongs to the Assembly of States Parties to both authorize the increase in the Permanent Premises budget and the proposed funding by the Court, in the light of applicable fiscal and financial rules, with the understanding that any funding by the Court shall not have any impact on the Court activities nor on the Contingency Fund.

In any event, it appears from the note provided by the PDO on June 1 that its item 4 specifies that "a full and final settlement was reached on June 2, confirmed in writing on June 7 and agreed in the July 1 settlement letter". In accordance with Dutch law, it would appear that the settlement entered into force as from 2 June 2016.
