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Report on the activities of the Oversight Committee*Summary*

The Present report provides a summary of the activities of the Oversight Committee during 2010 and all the developments in the permanent premises project during this year.

After the end of the Preliminary Design phase the project remains within budget and schedule. Both the Preliminary Design and the Building Delivery System were approved by the Committee on the recommendation of the Project Board. The governance structure of the project is under review by the Committee, following a Peer Review conducted by the Committee's experts and the reports of the Office of Internal Audit and the External Auditor. If authorised by the Assembly, at its ninth session, the Committee would implement any changes which it deems appropriate in the governance structure of the project, subject to the subsequent approval by the Assembly.

I. Introduction

1. At its sixth session, held in November/December 2007, the Assembly of States Parties established an Oversight Committee of States Parties (hereinafter “the Committee”) as a subsidiary body of the Assembly to provide strategic oversight for the permanent premises project in accordance with annex II to resolution ICC-ASP/6/Res.1.¹

2. The present report is submitted in accordance with resolution ICC-ASP/6/Res.1, annex II, paragraph 15, which provides that the Committee shall provide regular status reports to the Bureau and shall submit any draft resolutions or information to the Assembly through the Bureau. A draft resolution for consideration by the Assembly is contained in an addendum to this report.

3. Since the eighth session of the Assembly, held in November 2009, the Committee held two meetings under the Chairmanship of H.E. Mr. Lyn Parker (United Kingdom of Great Britain and Northern Ireland). As of January 2010, an additional 14 meetings were held under the Chairmanship of Mr. Martin Strub (Switzerland), who had been elected by the Committee to serve as Chairperson on 4 December 2009.

II. The Project

A. Selection of the architect

4. In November 2009, during the eighth session of the Assembly, the Committee, in accordance with resolution ICC-ASP/7/Res.1, annex I, reached its final decision in the selection of an architect by awarding the contract to schmidt hammer lassen architects, the second prize-winner of the architectural design competition.

5. At its eighth session, the Assembly took note of the decision of the Committee to request the Project Board to finalize the negotiations, including on the terms and conditions of the contract, with schmidt hammer lassen architects.

6. The decision of the Committee led to formal complaints from Ingenhoven Architects and Wiel Arets Architects. On 7 January 2010, Ingenhoven Architects initiated legal proceedings against the Court, the host State and schmidt hammer lassen architects before the District Court of The Hague, which were withdrawn at a later stage. Wiel Arets did not undertake any further action against the Court.

7. The Committee gave its necessary agreement, in accordance with resolution ICC-ASP/7/Res.1, annex I, paragraph 6, and resolution ICC-ASP/8/Res.5, paragraph 1, to the signing of the contract between the Court and schmidt hammer lassen architects for the design of the permanent premises. The signature of the contract was announced on 8 March 2010 during a press conference held in The Hague.

B. Finalization and approval of the Preliminary Design

1. Presentation of the Preliminary Design

8. At the thirteenth meeting of the Committee, held on 16 November 2010, the architect, Mr. Bjarne Hammer, made a presentation of the Preliminary Design which had started in March and finalised in October 2010, taking as a starting point the functional brief, and after seven months of intensive work with the user groups and the Municipality of The Hague. He explained that the project tried to reflect the Court’s values. The building would have an iconic value on its own, blend with the local environment (the sea, dunes, city of The Hague), and be a fantastic workplace for the staff (all offices would have a view). The building would reflect the Court’s values: icon, human dignity, openness (which was achieved through transparency, the absence of fences and the excellent daylight

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.

situation), global (meaning diversity), safety (having top security not visible from a distance and integrating the different elements in the surroundings), and credibility.

9. One of the main changes introduced in the Preliminary Design, as compared with the original brief, was the change in location of the staff parking and warehouse, which would now be placed on the eastern part of the terrain together with the bicycle parking, visitor parking and couches and satellite vans. This change, in the architect's view, would provide more day to day security. All the functions would be integrated in the landscape and not be visible. The secure drop-off entrance would remain the same as originally planned. Another key modification was a basement backbone, which had been envisaged to provide a sort of "spinal cord" connecting the whole building logistically and with the warehouse.

10. The ground floor would accommodate the main entrance and lobby, library, restaurant (very open and transparent), and open spaces between buildings with their parterre gardens. The first floor would be the main connecting floor from which each building office could be accessed. The office floors in each building would be articulated around a central core of common services such as lifts, toilets, kitchenettes, etc. The flexible floor plan permitted to have different sizes of offices as well as larger or smaller meeting rooms.

11. The Courtroom tower would accommodate one large court room in the ground floor in addition to two smaller court rooms, one on top of each other, on the second and third floors, as well as a media centre with the possibility of being converted into an additional fourth court room in case of necessity.

12. The landscape would be, in a sense, an artificial landscape trying to replicate as much as possible the original landscape consisting of parabolic dunes, extensive dune valleys, trees, bushes and grass. There would be paths through the dunes, and water ponds. Finally, the architect explained that the Plaza in front of the building would be the way to get to the entrance of the building for staff members and visitors, as well as the access for VIP's cars, etc. It would be also the first feature to reflect the iconic value of the building. An overview of the future permanent premises, at the site, is attached as annex I.

2. Surface area of the Preliminary Design

13. At the eleventh meeting of the Committee, the Project Director explained that the total gross area for the project had gone from roughly 46,000 m², as set out in resolution ICC-ASP/6/Res.1, up to approximately 50,000 m². In the Project Director's opinion, this increase in square meters would have no consequences for the total costs since the design had, achieved a very efficient ratio between façade and floor space. The rise in square meters was due to the fact that the court rooms and the logistics required more circulation space. However, the Project Director argued that this increase was defensible and could not be avoided without eliminating one or other necessary functional feature of the project.

3. Timeliness of the Preliminary Design

14. The process of analysing, changing and defining new requirements was delayed in the first stages of the Preliminary Design phase due to a lack of resources in the Court's organization. After receiving, on 7 July 2010, new requirements for the Courtroom tower and the office buildings, schmidt hammer lassen architects analysed the consequences for the planning of the Preliminary Design. In a letter dated 16 July 2010, the architect stated that the changes would cause a delay of 5 to 6 weeks to the design. In a combined effort, by all parties, it was possible for the architect to finalize the Preliminary Design on 27 October 2010, i.e. one month after the original deadline.

4. Cost of the Preliminary Design

15. In addition to the €92 million (approximately 90% of the total construction costs, price level at 1 January 2009), which provided the basis for the design competition, an additional €10.7 million (approximately 10% of the total construction costs) were reserved in the budget as a “cushion” for extra requirements to be used in different phases of the project (see annex II).

16. During the discussions leading to the finalization of the Preliminary Design, between the Court, as future user of the premises, and the design team, changes to the requirements were made and extra requirements were put forward. Accordingly, the Project Director decided to raise the budget for construction, during the preliminary design phase, from €92 to €95.39 million by using resources available in the cushion in a 33% (€3.39 million).

17. It was decided also that the rest of the cushion would be set aside for the Final Design, Technical Specifications and Execution phases to cover different items in need of further development such as security, interior, catering, ICT/AV plan, commuting plan, landscape, etc.

18. On 27 October 2010, the design team presented the final Preliminary Design. The costs of the design were assessed by the Project Manager at €98.7 million, that is to say, with a cost overrun of €3.31 million over the available budget of €95.39 million.

19. Cost cuttings were discussed in several meetings of the working groups and the Project Team. Based on these discussions, the Project Manager held meetings with the design team to find adequate solutions. The result of the assessment was presented in the Project Board meeting of 18 November 2010, together with a list of options to lower cost both by making adjustments to the design, and by changing some of the requirements, thus leading to a package of possible savings in the amount of €3.31 million.

5. Approval of the Preliminary Design

20. The Committee considered the approval of the Preliminary Design at its 14th meeting, held on 24 November 2010. The Committee had before it a letter from the Project Director, dated 23 November 2010, making recommendations to the Committee on the approval of the Preliminary Design, and summarizing the Stage Report prepared by the Project Manager, dated also 23 November 2010.

21. Regarding the design and quality assessment, the Project Director indicated that the design offered a very good solution for the requirements defined by the Court, and provided efficient solutions allowing for good cost and quality balance. The Project Director recommended the approval of the design, which gave enough flexibility to incorporate adjustments if needed. He also pointed out that some pending detailed items related to functionality, security and sustainability would be solved or finalized before the beginning of the Final Design phase.

22. The Project Director explained that the Preliminary Design was accompanied by a risk register at different levels of the project management in order to provide a good oversight of the risks identified, which would be updated before the Final Design phase.

23. As regards the cost assessment, the Project Director referred to the cost overrun in the amount of €3.31 million identified by the Project Manager over the approved €95.4 million budget for the Preliminary Design phase. He offered a list of eight items where savings could be found.

24. After considering all the items in the list, and in agreement with the Court, the Committee approved the Preliminary Design with the following conditions and reservations:

(a) Cost cuttings from the list presented by the Project Director were approved as follows:

<i>Item</i>	<i>Saving (EUR)</i>
1. Parking and warehouse not covered by sand	€1,500,000
3. No gas extinguishing in SER rooms	€300,000
4. No burglary protection 1 st floor	€100,000
5. Lower ceilings for the top three floors of the Court room tower	€250,000
6. Reduction of scenic public lifts from 4 to 2	€320,000
7. No provision for 2 nd staff entrance and related lobby	€201,000
8. No child care in the permanent premises	€300,000
Total savings	€2,971,000

In view of the clarifications provided by the Project Director, the Project Manager and the Court, the Committee decided to reduce the number of scenic public lifts in the Courtroom tower by 2 instead of 1 lift as originally proposed by the Project Director (the extra saving in the amount of € 160.000 is already incorporated under item 6 in the table above).

The Committee was of the opinion that further reduction in the number of lifts of the Courtroom tower could be achieved, while respecting the requirement of separating parties during the hearings. Accordingly, the Committee requested the Court to re-examine this issue with the user groups during the Final Design phase of the project and to report back to the Committee as soon as possible.

The Committee decided to leave out of the Preliminary Design the second entrance for staff in the understanding that if Court felt very strongly about it, it should present a new requirement, together with the cost involved (both in terms of construction, equipment and future operating costs). In this regard, it was pointed out that the current requirement on this item was that the design would be able to accommodate a future second entrance, not that the second entrance would be part of the project at this moment.

(b) In view of the different views expressed by the Project Director and the Court on the convenience of outsourcing the second MER and the related emergency power generator, as per the list of savings proposed by the Project Director, the Committee requested the Court and the Project Director to review this matter jointly, with the condition that should the second MER not be outsourced, additional savings would have to be found to get the Preliminary Design down at least to the budget of €95.4 million.

<i>Item</i>	<i>Cost (EUR)</i>
2. Outsourcing 2 nd MER and corresponding emergency power	€500.000

The Court would provide, in cooperation with the Project Director, a list of items where additional cost savings could be achieved. The Project Director and the Court would present the Committee, at its following meeting, with the options to reach at least the €3.31 million in savings as mandated by the Committee.

(c) The Committee requested the Project Director and the Court to re-examine the layouts of the court rooms, and specifically the situation of the public and number of seats in the public galleries, which seemed to depart from the usual standards in a court of law. Additionally, the Committee requested to be informed whether different court room lay outs could achieve further savings.

(d) The Committee requested the Project Director and the Court to confirm the requirement in the functional brief related to the Conference centre, which had translated, in the Preliminary Design, into a conference space for 350 people, which was too small for holding sessions of the Assembly, but seemed too big for the normal business of the Court, included the meetings of The Hague Working Group.

C. Decision on the Building Delivery System (BDS)

25. At its thirteenth meeting, held on 16 November 2010, the Committee heard a presentation on the building delivery system (BDS) of the project by the Project Manager, who explained that the BDS referred to the moment when the contractor was tendered thus determining the distribution of responsibilities between client and contractor.

26. For the permanent premises project, three models had been examined through a series of workshops with the involvement of all parties in the project (project management, design team, host State, PDO, POPP, Procurement, Legal and independent experts): a) Traditional System (construction only), b) Design and Build, and c) Engineering and Construct.

27. The Project Board recommended the Engineer and Construct model after having considered the main aspects of the different BDS models, the situation of the project and the project risk register. The Engineer and Construct model guaranteed the buildability of the design and the influence of the Court until the definition of the technical specifications. Under this model, the design team, after completing the design, would become part of the constructor's organization. On the other hand, it was too late to opt for the Design and Build model in the current stage of the project. The independent expert present at the meeting supported the recommendation.

28. The Committee considered the approval of the Building Delivery System at its fourteenth meeting, held on 24 November 2010. The Committee had before it a letter from the Project Director, dated 23 November 2010, recommending the adoption of the Engineer and Construct model which had been endorsed by the Project Board at its 18 November meeting.

29. The Project Director explained that the main reason to recommend this model was to avoid risks during the construction phase. However, this system also provided a better chance to shorten construction time because of the technical solutions that could be found by the general contractor.

30. The Committee approved the Engineer and Construct model, as recommended by the Project Director and endorsed by the Project Board.

D. Demarcation list

31. The Project Manager made a presentation on the demarcation of cost at the thirteenth meeting of the Committee, held on 16 November 2010, which was related to the user investment on user equipment (security installations, ICT and AV equipment, etc) and loose furniture. User equipment and loose furniture, together with operational costs (i.e., cost of moving) constituted the expenses commonly referred to as "box 4", not included in the €190 million budget.² The investment cost in box 4 could be covered either by the annual budgets of the Court, or by a budget with a one-time investment.

32. The Project Manager stressed that user equipment and loose furniture should be defined by the Court as soon as possible since some of the items (such as those for internal security) had consequences for the Final Design and the Execution phase of the construction project. The Court should also decide which items from its current premises would be re-used in the new premises and which ones would have to be purchased.

² *Official Records ... Sixth session... 2007* (ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.1, preambular para. 12; *Official Records ... Seventh session... 2008* (ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.1, preambular para. 4; *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.5, operative para. 10.

E. Zoning plan

33. At its seventh meeting, held on 7 June 2010, the Committee observed that the Project Director had filed a formal complaint with the Municipality of The Hague concerning the zoning plan. The Project Director indicated that the Municipality of The Hague had based the current zoning plan on the competition design, which resulted in less square metres being available for, inter alia, the Courtroom tower and the security booth. The Committee was informed that discussions with the Municipality were ongoing and that, in the view of the Project Director, the issue should be resolved soon.

34. The Committee noted with concern that district heating was not available in the vicinity of the Alexanderkazerne site, which could have a significant financial implications as well as an impact on the sustainability of the project. The Project Director indicated that, at the time of the architectural design competition, the Municipality had confirmed that district heating would be in place. Discussions with the Municipality and the host State on this issue were ongoing.

III. Financial issues

A. Financial reporting by the Project Director

35. At its fifth and sixth meetings, held on 5 March and 13 April 2010, respectively, the Committee considered the financial reports for 2009 and for the first quarter of 2010, submitted by the Project Director's Office. The reports provided information on the funds drawn from the host State loan, the accrued interest, the expenditures for the project and the status in one-time payments.

36. The Oversight Committee requested the Committee on Budget and Finance, at its fourteenth session, to provide advice on the level of detail required in financial reports and to assist in identifying any missing elements that merited inclusion in future reports.³

37. The Committee on Budget and Finance noted that the financial reports were difficult to understand given the state of information provided. In its advisory capacity, the Committee on Budget and Finance recommended that the financial reports "contain more background information, be forward-looking and reference the risks of the project, as well as the measures that had been taken to overcome them." The Committee on Budget and Finance further recommended that future reports contain information on financial savings, for example resulting from a lower inflation rate than the initially anticipated.⁴

38. At its seventh meeting held on 22 June 2010, the Oversight Committee considered the third Project Director's Office report, for the second quarter of 2010. The report provided an update on the activities of the permanent premises project with a focus on the financials aspects of the project as per the end of the second quarter of 2010. In line with the CBF recommendations, the report included an overview of the main current challenges experienced within the project and proposed actions for mitigating risks, highlighting also the future activities of the project. Finally, the report included a separate budget with the escalation in the past and an estimate of the escalation up to the moment the building would be handed over to the Court.

39. At its fourteenth meeting, held on 24 November 2010, the Oversight Committee considered the fourth report of the Project Director, dated 23 November 2010, which provided an update of the project, a summary of activities of the PDO during 2010, and financial information for the third quarter of 2010. The report included also an overview of the current main challenges for the project and recommendations to mitigate those.

40. The Project Director stressed that the project remained within budget and that no use of the host State loan would have to be made until 2012 in view of the current level of one-time payments received by the Court.

³ ICC-ASP/9/CBF.1/5, para. 24.

⁴ ICC-ASP/9/5, para. 86.

B. One-time payments and host State loan

41. At its seventh session, held in November 2008, the Assembly of States Parties, in resolution ICC-ASP/7/Res.1, paragraphs 6 and 7, invited States Parties to consider making a one-time payment equal to their share in the value of the total estimated overall construction costs, subject to an adjustment once the final cost of the project was determined. Upon recommendation of the Oversight Committee, the Assembly adopted, at its resumed eighth session, resolution ICC-ASP/8/Res.8, extending the date for States Parties to opt for one-time payments to 15 October 2012.

42. Following a query by the Oversight Committee at its sixth meeting, the Project Director informed the Committee, at its seventh meeting, held on 22 June 2010, that the host State had accepted the proposal that, in light of the incoming one-time payments, funds that had been drawn from the host State loan be returned to the host State so as to avoid the accrual of interest in the years 2010 and 2011.

43. As at 29 November 2010, 25 States Parties have selected the option of a one-time payment of their assessed share, representing a total value of €32,395,647. As at the same date, one-time payments, partial or in full, have been received from 17 States Parties, totaling €17,639,906. More details on the options and received one-time payments are provided in annex III.

44. The most recent schedule for the use of funds deriving from one-time payments and the loan is provided in annex IV. Given the current committed one-time payments and the one-time payments already received, annex IV shows that the project can be financed with the one-time payments, without having to make withdrawals from the host State loan in 2010 and 2011.

45. Regarding the realisation of the estimates, the cash flow scheme, incorporated as annex I to the draft resolution on permanent premises⁵, shows the expenditures realized in 2009 and 2010, as per the previous estimates. From the year 2011 onwards, the cash flow scheme shows the prediction of expenditures, in accordance with the approved Building Delivery System and time schedule.

C. “Cost versus delay” model

46. At the thirteenth meeting of the Committee, held on 16 November 2010, the Project Manager made a presentation on the model it had prepared to calculate the cost of any delay that would happen in the project at its different phases, and presented examples of different delay scenarios. The model, prepared to calculate both the cost of delays and the savings that could be achieved from gaining time, was not intended to mitigate any delay but to provide a tool for decision-making when having to choose between cost and delay.

47. The Project Manager explained that the annual cost of the interim premises for the Court was €6.7 million (no maintenance included since it was paid by the host State), while the new premises would cost the Court €16.8 million annually as the cost of ownership. The cost of ownership included interests paid for the host State loan, renovation, end of life cycle and depreciation, in addition to operating costs. The Project Manager would provide at a later stage, a breakdown of the cost of ownership in order to allow the Committee to compare between the expenditures of the Court for its interim premises and the future expenditures for the permanent premises, and to take the appropriate action needed. In any case, both the Project Director and the Project Manager were of the opinion that the design presented by the architect was very efficient and cost-effective.

48. Although the figures changed from phase to phase, generally the cost of one month delay would range in the vicinity of €1,000,000, of which €500,000 (or the equivalent of 3% annual escalation) for fees, extra work, etc., and the rest as the cost of rent for the interim premises i.e., another €500,000 per month, should the rent free period not be extended.

⁵ ICC-ASP/9/28/Add.1.

49. The Project Manager explained that, notwithstanding the one-year delay of the project, it could still be completed within the €190 million budget. This was mainly due to the near absence of inflation during last year and the fact that the resulting additional fees could be absorbed within the budget.

IV. Operation of the governance structure

A. Introduction

50. At its fifth meeting, held on 5 March 2010, the Committee considered, in accordance with resolutions ICC-ASP/7/Res.1 and ICC-ASP/8/Res.5, the project manual prepared by the Project Board⁶, which, inter alia, outlined the governance structure. The Committee was informed by the Project Director that the governance structure approved by the Assembly had been further elaborated so as to be in line with the actual needs of the project. The Committee observed that a number of challenges had to be overcome in the implementation and operation of the structure. In light of this, the Committee agreed to review the governance structure three months later.

51. At its seventh and eighth meetings, held on 22 June, and 5 July 2010, respectively, the Oversight Committee had before it several memoranda and letters, from the Project Director, the Registrar and the President of the Court referring to a number of issues related to the governance structure.

52. At its eighth meeting, held on 5 July 2010, the Committee noted with concern the continued submission of complaints related to the operation of the governance structure to the Oversight Committee, emanating from the Court, individual Court organs or the Project Director, and that the parties involved in the project seemed to rely on the Oversight Committee for resolving these issues instead of addressing them in more appropriate fora, such as the Project Board, or through internal Court mechanisms.

B. External audit

53. The External Auditor's report for 2009, contained in the financial statements for the period 1 January to 31 December 2009⁷, was released on 28 July 2010. Recommendation 1, in paragraph 26 of the report, stated that "following the initial period of operation, the Oversight Committee should review the governance arrangements relating to the Project, to confirm they are fit for purpose, and provide for full and clear accountability."

54. Other recommendations of the External Auditor report were⁸:

2. Delegations and authorities should be set at an appropriate level and authorizing officers have sufficient information, authority and oversight to discharge their responsibilities. Authorization should ultimately sit with the project sponsor;

3. Effective channels of communication should be developed between the Project Board, Oversight Committee and the Court's Co-ordination Council to ensure that all relevant information is communicated freely and openly to all of the organs within the Court;

4. The Court should build on the development of communications between the project team and users. The Board might consider a survey of key users on whether they feel these are effective;

5. The Project Team should develop a benefits realization plan which is included in the project manual in order to demonstrate the achievement of agreed objectives and benefits to enable the assessment of value for money; and

6. Following appointment of the architect, the Project Board should undertake a process review to identify any lessons learned to inform future procurements."

⁶ Dated 3 March 2010.

⁷ ICC-ASP/9/13.

⁸ Ibid., paras. 26 and 34.

C. Recommendations of the Committee on Budget and Finance at its fifteenth session

55. The Committee on Budget and Finance, at its fifteenth session, held from 23 to 30 August 2010, noted the importance of a timely follow up on the External Auditor's recommendations and urged the Project Director's Office to specify the unexpected costs resulting from the delays which had occurred and help identify offsetting savings.⁹

D. Peer Review by the independent experts

56. Based on recommendation 1 of the External Auditor, and considering the need identified previously to address the governance of the project, the Committee decided at its ninth meeting, held on 14 September 2010, to undertake a Peer Review on the governance structure of the permanent premises project to be conducted by its independent experts.

57. The experts¹⁰ made a short presentation at the twelfth meeting of the Committee, held on 10 November 2010, on the main findings and recommendations of the peer review, reflected in their report dated 4 November 2010. The meeting was attended also by the host State, the Court and the Project Director

58. The experts proposed to find a pragmatic governance structure, in the context of this one-off project with a limited time span of five more years, which would achieve the objective of creating a joint ownership and involvement in the project by all parties in the project. The main recommendations were as follows:

(a) The modification of the Oversight Committee to include, as members, senior staff of the Court, and the host State;

(b) The establishment of a single Project Director with mandated responsibilities and authority over all the sub-projects (user project, cost and quality project, site project, and the design and construction project).;

(c) The merging of the Project Director's Office (PDO) and the Project Office Permanent Premises (POPP) into a single office, underpinned by a Project Management Team coordinating all the sub-projects;

(d) The disbanding of the Project Board, which had not worked well to date and had been, at times, concerned with operational issues, which should be dealt with at a lower level;

(e) The provision of project management support to the user project to ensure a more positive and coordinated input of user requirements, capitalizing on the knowledge within the different organs of the Court; and

(f) The complete examination and clarification of the financial framework of the project, including the examination of the arrangements necessary to cope with the future invoicing pressures of a construction project.

E. Report of the Office of Internal Audit

59. At the ninth meeting of the Committee, held on 14 September 2010, The Internal Auditor made a presentation on preliminary findings and recommendations related to governance aspects, which were part of the audit that had been conducted on the Permanent Premises Project. The internal auditor explained that originally, the audit was focused mainly on project management and that the governance structure was considered only inasmuch as was necessary for that purpose. The governance aspects of the project became more important later in the audit, once it was realized that some governance dysfunctions needed to be addressed.

⁹ ICC-ASP/9/15, para. 137.

¹⁰ Mr. Ken Jeavons and Mr. Pierre Gilliot, supported by Mr. Jean-Manuel Megow.

60. The report of the internal audit, dated 3 November 2010, was made available to the Committee members on 29 November 2010, at their request, as an additional input for their discussions on the governance structure of the project.

F. Review of the governance structure of the project

61. The host State and the Court made oral comments to the peer review conducted by the experts at the 13th meeting of the Committee, held on 10 November 2010. The Project Director later submitted his comments in writing on 23 November 2010. The Court submitted its comments in writing on 24 November 2010.

62. In view of the fact that it was therefore not possible for the Committee to conduct a full consideration of all elements of the governance of the project in advance of the ninth session, the Committee decided to keep the issue under consideration during 2011 and to request the authorization of the Assembly to implement any changes in the project which it might deem necessary, subject to the subsequent approval of the Assembly.

V. Other matters

A. Project manual

63. At its fifth meeting, held on 5 March 2010, the Committee considered, in accordance with resolutions ICC-ASP/7/Res.1 and ICC-ASP/8/Res.5, the project manual prepared by the Project Board.¹¹ The project manual, *inter alia*, contained a risk register.

64. The Committee agreed to consider the risk register in detail at its forthcoming meetings. The Committee noted with concern the area of risk in the project organization, in particular since it had the potential to cause additional delay. In this connection, the suggestion was made to include in the project manual a chapter on the mitigation of risks and possible strategies for the acceleration of the project and for preventing additional delays.

65. The report of the Internal Auditor recommended splitting the current Project manual into two different documents: a) a Project Plan describing the general goals and approach of the project, and b) the Project Manual *stricto sensu*, with the detailed instructions and procedures of the project. Moreover, the Internal Auditor recommended producing other documents and reports. As the report, became available in recent dates, the recommendations are being studied by the Project Director, who will make his proposals to the Oversight Committee at a later stage.

B. Risk Register.

66. There are risk registers on different levels in the project: at the Design Team level (mainly technical risks), at the Project Team level (technical and procedural risks) and at the Project Board level (combining risks at the strategic level and the most relevant risks at the Design Team and Project Team levels). For every risk, a risk manager has been identified. The risks are monitored in all subsequent meetings.

C. Communication

67. One of the lessons learned during the Preliminary Design phase was that communication should be improved drastically. This was also a recommendation of the Internal Auditor. In this regard, the PDO's communication manager has put in place a newsletter as of September 2010 and an information centre for the project as of October 2010. At the request of the Registrar, an internet site is being developed to inform States Parties and all other interested parties on the development of the project. The site will be launched shortly. Also, in order to keep staff of the Court duly informed, an intra-net site is being developed and will be working in January 2011.

¹¹ Dated 3 March 2010.

D. Selection of the new Project Director

68. On 4 November 2010, the Project Director tendered his resignation in a letter addressed to the Registrar of the Court and the Chair of the Committee, indicating that it would take effect on 1 March 2011.

69. At its twelfth meeting, held on 10 November 2010, the Committee decided that, in keeping with the spirit of the recommendations of the peer review, an interview panel for the selection process of the Project Director should be established consisting of one representative from the Committee, the Court and the host State. Ambassador Jorge Lomónaco (Mexico) accepted to represent the Committee at the panel and chair it. The point was made that the Court should be represented at the panel at a higher level than D-1, since D-1 was the level of the post under recruitment. In addition, the panel would benefit from the assistance of one non-voting independent expert, and one representative from the Human Resources Section to provide assistance with the technical/administrative work. Other members of the Committee would be allowed to be present during the process but not as members of the panel. The selection panel would then make its recommendations to the Committee, which would make the final decision.

70. The Committee further decided that in case of delay with the recruitment of the Project Director, there would be the possibility of hiring a consultant as an interim solution.

VI. Future work of the Committee

71. During the year 2011, the Committee will continue its examination of the governance structure of the project. If authorized by the Assembly at its ninth session, it will adopt and implement any adjustments that may be required, on a provisional basis, until approved by the Assembly at its following session.

72. The Committee will also complete the recruitment of the new Project Director with the participation of the Court and the host State, in order to select a suitable candidate who would successfully lead the project and represent all parties in the project.

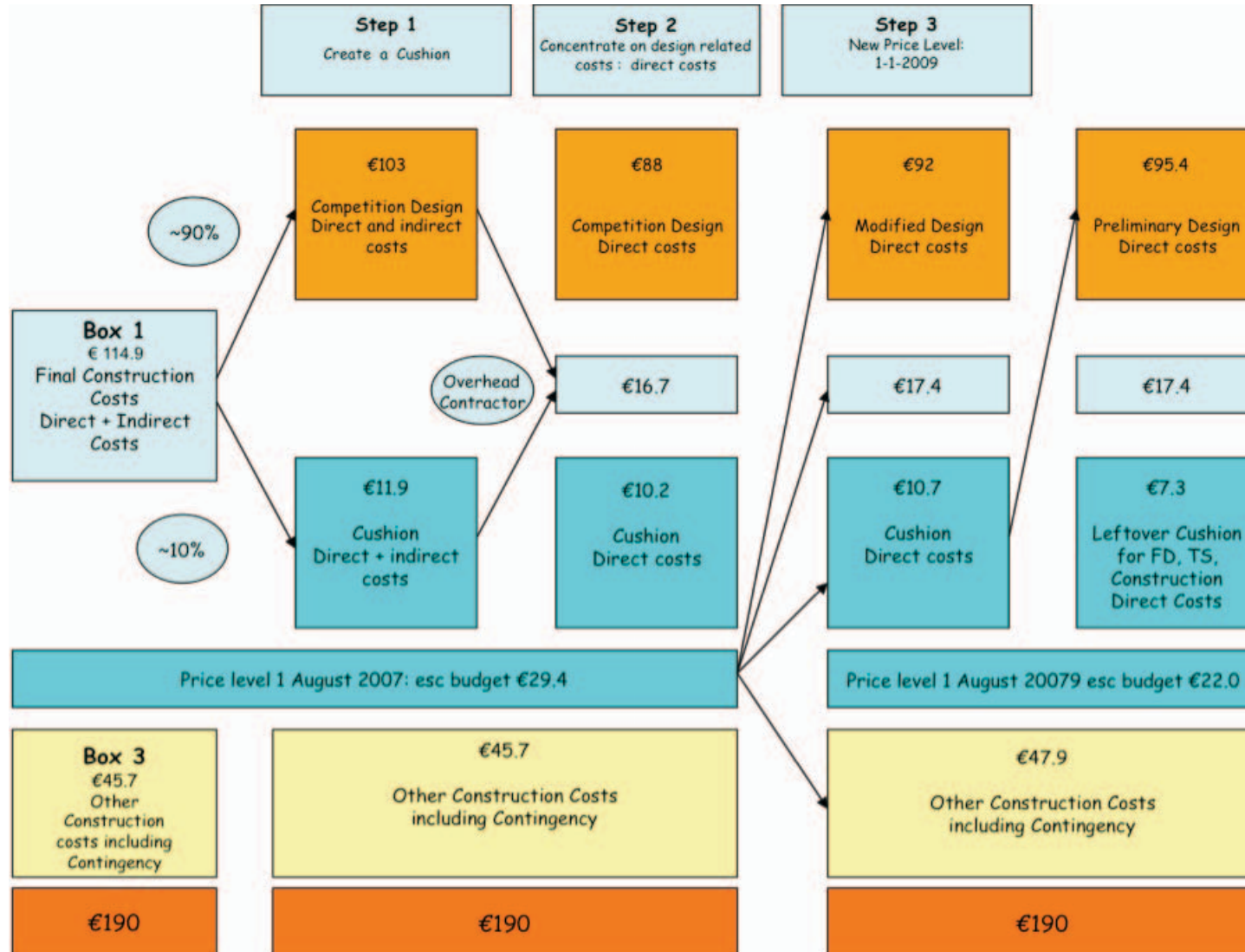
73. Finally, the Committee will approve the Final Design and the tender strategy to go to the next Construction phase which will start at the beginning of 2012.

Annex I



Annex II

Chart on costs



Annex III

One-time payments and cash flow

received

One-Time Payments and cash flow

29 November 2010

States	No. of installments	Timing of installments	16-Oct	16-Nov	Later	2009	2010	2011	2012	Total
1 Andorra	not specified	not specified	x				18,305			18,305
2 Australia	number of installments	before end 2012	x				2,725,921	0	1,362,960	4,088,881
3 Burkino Faso	not specified	not specified			x		4,576			4,576
4 Cambodia	not specified	not specified	x				2,288			2,288
5 Canada	3	not specified	x				6,811,751			6,811,751
6 Lithuania	in periodic installments	in 2011 and 2012			x		23,644	23,644	23,644	70,932
7 Mexico	3	between 2010 and 2012		x			1,721,433	1,721,433	1,721,433	5,164,300
8 Montenegro	not specified	not specified	x				2,268	20		2,288
9 Portugal	3 installments of EUR €494,000	2010, 2011 and 2012	x				401,947	401,947	401,947	1,205,842
10 South Africa	not specified	not specified	x				663,557			663,557
11 Jordan	3	between 2010 and 2012			x		9,153	9,153	9,153	27,458
12 Italy	3	yearly installments in 2010, 2011 and 2012			x	2,092,090	1,781,707	3,873,977	3,873,977	11,621,751
13 Mauritius	3	not specified			x		25,169	0	0	25,169
14 Hungary	3	not specified			x		186,101	186,101	186,101	558,303
15 Serbia	monthly installments of EUR 5,000	start in 2010			x		48,051	0	0	48,051
16 Bolivia	not specified	not specified			x		13,729	0	0	13,729
17 Finland	1	before end 2010			x		1,290,503	0	0	1,290,503
18 Samoa	1	not specified			x		2,288	0	0	2,288
19 Liechtenstein	1	not specified			x		22,881	0	0	22,881
20 Djibouti	3	not specified			x		763	763	762	2,288
21 Albania	2	2011 and 2012			x		0	6,865	6,864	13,729
22 Iceland	1	2012			x		0	0	84,661	84,661
23 Benin	not specified	not specified			x		0	2,288	0	2,288
24 Czech Republic	2	2012			x		0	0	642,963	642,963
25 San Marino	1	not specified			x		6,864	0	0	6,864
Total of One-time Payment received till 19 Nov 2010			12,792,912	1,721,433	12,356,240	2,092,090	15,762,900	6,226,191	8,314,466	32,395,647
				17,639,906						

Total of One-time Payment received till 19 Nov 2010

17,639,906

Cash flow overview	Actuals 2010		Forecast 2010	
	Qtrr I	Qtrr II	Qtrr III	Qtrr IV
Cash in:				
Balance from previous year	2,237,619	3,320,139	12,417,862	13,040,289
Incoming One-time payments	2,847,212	11,336,882	1,363,722	215,084
Total:	5,084,831	14,657,021	13,781,584	13,255,373
Cash out:				
Costs for the permanent premises	1,764,692	814,159	741,295	1,803,620
Repayment Loan MFA NL		1,425,000		
Balance to carry over	3,320,139	12,417,862	13,040,289	11,451,753

Estimated		
2010	2011	2012
2,237,619	11,451,753	5,477,944
15,762,900	6,226,191	8,314,466
18,000,519	17,677,944	13,792,410
5,123,766	12,200,000	15,700,000
1,425,000		
11,451,753	5,477,944	-1,907,590

Annex IV

Loan utilization – One-time payments

host State loan and one-time payment utilisation - actual for the period 2009 until third quarter of 2010 - projection until 2015													
Date: 29 November 2010													
EUR	Drawn from host State loan	Approved loan amount	2009	2010	2011	2012	2013	2014	2015	Remaining amount of loan at expiry date	Reduction of loan to be repaid (17.5 %)	Final amount of loan	Total amount of interest
January			0	0	0		4,575,000	4,600,000	2,975,000				
February			0	0	0		4,575,000	4,600,000	2,975,000				
March			0	0	0		4,575,000	4,600,000	2,975,000				
April			200,000	0	0		4,575,000	4,600,000	2,975,000				
May			0	0	0		4,575,000	4,600,000	2,975,000				
June			0	0	0		4,575,000	4,600,000	2,975,000				
July			100,000	0	0		4,575,000	4,600,000	2,975,000				
August			150,000	0	0		4,575,000	4,600,000	2,975,000				
September			100,000	0	0		4,575,000	4,600,000	2,975,000				
October			275,000	0	0	1,400,000	4,575,000	4,600,000	2,975,000				
November			200,000	0	0	1,400,000	4,575,000	4,600,000	2,975,000				
December			400,000	0	0	1,483,824	4,575,000	4,600,000	2,975,000				
Total per year drawn from host State loan		200,000,000	1,425,000	0	0	4,283,824	54,900,000	55,200,000	35,700,000				
Total per year cash flow needs			1,279,471	5,400,000	12,900,000	17,100,000	54,900,000	55,200,000	35,700,000				
Scenario 1 = baseline	From host State loan	200,000,000	1,425,000	5,254,471	12,900,000	17,100,000	54,900,000	55,200,000	35,700,000	17,520,529	3,066,093	179,413,378	
<i>Zero one-time payments - all funds drawn from host State loan</i>	income one-time payments	0	(*) 145,529										
	Interest scenario 1												8,014,309
Scenario 2	From host State loan		1,425,000	0	0	4,283,824	54,900,000	55,200,000	35,700,000	48,491,176	3,066,093	179,413,378	
<i>One-time payments - committed to be paid in 2010, 2011 and 2012</i>	Income one-time payments	32,395,647	2,092,090	15,762,900	6,226,191	8,314,466							
One-time payments - already received		17,639,906	2,092,090	15,547,816									
One-time payments - to be received in year X to balance cash flow needs				11,175,519	4,501,710	- 4,283,824							
	Interest scenario 2			(**)									5,106,287
Legend													
<i>Actual</i>													
<i>Projected</i>													
(*) carry over to 2010													
(**) 1,425,000 EUR from host State loan repaid in 2010													