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**Assembly of States Parties**

Distr.: General  
31 October 2008

Original: English

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**Seventh session**

The Hague

14 - 22 November 2008

**Report of the Oversight Committee on the permanent premises**

**Addendum**

*The Assembly of States Parties,*

*Recalling* resolution ICC-ASP/6/Res.1, adopted at the 7<sup>th</sup> plenary meeting of the sixth session of the Assembly, on 14 December 2007,

*Further recalling* that in resolution ICC-ASP/6/Res.1 the overall construction costs, which include a contingency reserve, fees for the consultants and contractors, pre-tender and post-tender inflation, any fees for permits and dues and a fund for integrated, specialized representational features were estimated to be no more than €190 million at the 2014 price level,

*Noting* that this estimate may need to be adjusted over the course of the project to accurately reflect market developments and price increases in construction materials,

*Further noting* that such estimate is exclusive of the costs that are related to the project but not related directly to the construction, such as the costs of relocating the Court from the temporary premises to the permanent premises, movable items such as furniture and ICT hardware, potted greenery and decorations, costs relating to communications and public relations for the project and costs relating to the interim premises, and stressing the need to address those issues within the Assembly and, where relevant, the Oversight Committee on permanent premises, so as to ensure comprehensive and transparent financial planning,

*Noting* the results of the architectural design competition and *recognizing* that the project will enter into the design phase,

*Mindful* of the reports of the Committee on Budget and Finance on the work of its tenth and eleventh sessions,

*Reiterating* the important role of the Court throughout the process,

*Noting* the report of the Oversight Committee on the permanent premises,

*Welcoming* the appointment of the Project Director and *recalling* his leading role in the overall management of the project and his responsibility for meeting the project's goals, timelines and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1,

*Recalling* that the financial administration of the Court is governed by the Financial Regulations and Rules of the Court and that the Registrar, as principal administrative officer of the Court, is responsible and accountable for ensuring that the Financial Regulations and Rules are administered in a coherent manner throughout the Court,

*Noting* that the internal and external audit arrangements of the Court are applicable to the project,

1. *Requests* the Project Board, in its negotiations with the prize-winners of the architectural design competition, to observe the procedure for awarding a contract contained in annex I to this resolution, and to submit its recommendations to the Oversight Committee for its consideration and agreement, prior to the signature of the contract by the Registrar;
2. *Accepts* those elements of the offer of the host State contained in the letter dated 25 January 2006 from the Minister of Foreign Affairs of the host State to the President of the Assembly of States Parties relating to the provision of a loan of up to a maximum of €200 million, to be repaid over a period of 30 years at an interest rate of 2.5 per cent, on the basis of annex II to this resolution;<sup>1</sup>
3. *Welcomes* the offer of the host State, in the event of the €200 million not being fully utilized at the end of the project, to reduce the amount of the loan to be repaid with an amount that corresponds to 17.5 per cent of the non-utilized part, as a subsidy in accordance with annex II;
4. *Requests* that the Oversight Committee continue to consider alternative sources of financing;
5. *Requests* the Registrar, to negotiate with the host State the relevant agreements for the implementation of the loan referred to in paragraph 2, in accordance with the criteria referred to in annex II to this resolution, and to submit them to the Oversight Committee for approval;
6. *Invites* 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 is determined, and *agrees* that these States will not be assessed for the accrued interest and the repayment of the host State loan to the extent that they have contributed to the project through one-time payments;
7. *Requests* States Parties to inform the Registrar, in accordance with annex III, of their decision to select the option of a one-time payment of their assessed share by 30 June 2009;
8. *Decides* that States Parties not opting for a one-time payment shall be assessed annually for the payment of interest and for the repayment of the host State loan, according to the scale of assessments to the Court's regular budget applicable at the time of the assessment.

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<sup>1</sup> The operative paragraphs on the issue of financing are subject to further consideration.

9. *Requests* the Oversight Committee to continue exercising its functions in accordance with resolution ICC-ASP/6/Res.1 and, specifically, to:

- (a) Prepare, in consultation with the Project Board, a detailed financing mechanism that combines the use of the loan referred to in paragraph 2 of this resolution, the possibility for States Parties to make one-time payments, and other possible sources of financing;
- (b) Prepare a mechanism for States Parties to make one-time payments, taking into account the principles contained in annex III; and
- (c) Submit proposals for scheduling one-time payments, so as to start receiving such payments as of 2010 but not later than 2012;

10. *Requests* the Registrar, in this connection, to establish, in accordance with the Financial Regulations and Rules, a special account for the sole purpose of holding one-time payments by States Parties for the permanent premises project;

11. *Decides* to establish, within the ambit of the annual proposed programme budget, a permanent premises budget<sup>2</sup> for the purpose of:

- (a) Payment, as of the first utilization of the host State loan, of the accrued interest, which will be determined annually and will be included in the proposed programme budget of the following year; and
- (b) Repayment of the host State loan through regular annual instalments, which shall commence after expiration of the leases of the interim premises<sup>3</sup>;

12. *Decides* that all costs relating to the staffing and operation of the Project Director's Office shall be included in the proposed programme budget of the Court, under major programme VII;

13. *Takes note* of the cash-flow scheme contained in annex IV and *requests* the Project Director, in consultation with the Oversight Committee in accordance with resolution ICC-ASP/6/Res.1, to submit annually, for the consideration of the Assembly at its regular session, more detailed estimates of the final cost envelope for the project on the basis of the most recent information, including costs that are related to the project but not directly related to the construction;

14. *Authorizes* the Court, in consultation with the Project Board, to draw on the host State loan to cover costs in relation to the construction of the permanent premises, in accordance with:

- (a) The cash flow scheme included in annex IV, subject to any modifications of the cost estimates that may result in light of paragraph 13 above;
- (b) The guidelines for contracts and expenditures, as reflected in annex V; and
- (c) Any further guidance from the Oversight Committee;

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<sup>2</sup> See document ICC-ASP/7/CBF.2/7, paragraph 17.

<sup>3</sup> At the moment repayment starts, the host State will make a provisional calculation of the subsidy.

15. *Requests* the Project Director to report annually to the Assembly of States Parties, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure, and on the costs that are related to the project but not related directly to the construction;

16. *Requests* the Registrar and the host State to prepare the relevant legal and/or contractual agreements between the Court and the host State on the separation of the ownership of the land and of the building, the land lease and the mortgage, and to submit them to the Oversight Committee for approval;

17. *Notes* the progress made by the Court in the development of a project manual which takes into account the provisions of resolution ICC-ASP/6/Res.1, annexes II, III and IV, and *requests* the Project Board to continue to develop the manual and to submit it to the Oversight Committee for approval;

18. *Invites* the Registrar to make operational the trust fund referred to in annex VI of resolution ICC-ASP/6/Res.1 so as to start receiving voluntary contributions and, in that connection, *invites* members of civil society with a proven track record of commitment to the mandate of the Court to consider raising funds for the permanent premises project;

19. *Requests* the Bureau to remain seized of this issue and report back to the Assembly at its next session.

## Annex I

### Procedure for awarding a contract to the design team

1. The three prize-winners will be ranked in first, second and third order and will be provided with the recommendations of the Jury and/or additional requirements set by the Court.
2. The three prize-winners will also receive, sufficiently in advance, a concept contract and a questionnaire which will be prepared by the Project Board. The latter will serve to assess, among others, the following:
  - (a) Result of the modifications required by the Jury or the Court;
  - (b) Strategy for realizing the project in the Netherlands (including the quality of the design team, planning and implementation);
  - (c) Costs;
  - (d) Fees; and
  - (e) Contractual aspects.
3. The three prize-winners will respond to the questionnaire in writing, drawing or sketching and will be invited to participate in an interview that will be conducted by the Project Board and will include a representative of the Court's Procurement Section.
4. The Project Board will evaluate the responses from the three prize-winners, taking into account the result of the architectural design competition and in light of a set of minimum requirements, which will include, but not be limited to, the following:
  - (a) *Costs*: Whether the proposed design fits into the estimated budget as referred to in resolution ICC-ASP/6/Res.1. The cost estimation must be transparent and reliable.
  - (b) *Compliance with the functional brief*: Whether the design complies with the requirements in terms of functionality, zoning plans, sustainability, etc.
  - (c) *Recommendations of the Jury or client*: Whether the recommendations issued by the Jury and/or additional requirements set by the Court are accepted/implemented.
  - (d) *Planning*: Whether finalization of the executive design fits into the planning of the project in terms of timelines and delivery.
  - (e) *Fee offer*: Whether the estimated fees are proportionate to the project, reasonable and clear.
  - (f) *Draft contract*: Whether the architect accepts the draft contract and the conditions therein to a reasonable extent as a basis for the negotiation.

5. Once the evaluation is completed, the Project Board will refer its findings and recommendations to the Oversight Committee for a final decision.
6. Once the decision for awarding the contract is taken, the Project Board will negotiate the terms and conditions of the contract with the selected design team. The agreement of the Oversight Committee shall be necessary prior to the signing of the contract between the Court and the design team.

## **Annex II**

### **Criteria applicable to the agreement on the loan**

The agreement with the host State regarding its offer to provide a loan for the permanent premises project will stipulate that:

- (a) A loan of up to a maximum of €200 million will be provided to the Court by the host State, to be repaid over a period of 30 years at an interest rate of 2.5 per cent.
- (b) The agreement does not create for the Court any legal obligation to borrow the full amount (i.e. €200 million) from the host State or in any way restrict the Court's discretion in deciding on the amount that is to be borrowed.
- (c) The agreement does not in any way restrict the authority and discretion of the Court to seek funds for the same purposes from any other source if the Court chooses to do so.
- (d) In the event of the €200 million not being fully utilized at the end of the project, the host State will reduce the amount of the loan to be repaid by an amount that corresponds to 17.5 per cent of the non-utilized part of the loan.
- (e) Interest is to be paid annually, as of the first utilization of the host State loan.
- (f) Repayment of the loan, through regular annual instalments, will commence after expiration of the leases of the interim premises.

## **Annex III**

### **Principles for one-time payments of the assessed share**

1. States Parties will inform the Registrar of their decision to select the option of one-time payment of their assessed share by 30 June 2009, including whether they would prefer paying in one, two or three instalments.
2. States that deposit their instrument of ratification or accession to the Rome Statute before 30 June 2009 will be entitled to opt for the one-time payment, as long as they inform the Registrar of their decision to do so by that date, as provided for in paragraph 7 of this resolution and this annex, notwithstanding the date upon which the Statute enters into force for that State.
3. States Parties not opting for a one-time payment shall be assessed annually for the payment of interest and for the repayment of the host State loan, according to the scale of assessments to the Court's regular budget applicable at the time of the assessment.
4. The Registrar will inform States Parties wishing to make a one-time payment, as soon as possible, of their assessed share, based on the most recent estimates of the final cost envelope referred to in paragraph 13 of the resolution.
5. One-time payments shall be subject to an adjustment once the final cost of the project and the amount of the host State subsidy are known.
6. One-time payments shall be held in a special account and utilized to fulfil payment obligations relating to the construction of the permanent premises.
7. The adjustment referred to in paragraph 6 of this resolution and in this annex will be the difference, in favour or against, between the one-time payment made by each State Party during the project and the definitive one-time payment calculated at the end of the project. For such purposes, definitive one-time payments will:
  - (a) Take into account the scale of assessments to the Court's regular budget applicable at the time the final cost envelope of the project is determined;
  - (b) Apply the reduction on the amount of the loan provided by the host State, as described in paragraph 3 and annex II of this resolution; and,
  - (c) Apply any voluntary contribution received, as foreseen in paragraph 18 of this resolution.



## Annex IV

### Cash-flow scheme

	Totals (M€)	2008		2009		2010		2011		2012		2013		2014		2015	
		Competition	Design & tendering				Execution				Maintenance						
		year	year	year	year	year	year	year	year	year	year	year	year	year	year	year	year
<b>BOX 1; Construction costs</b>	100% € 114.9	0%	0%	0%	0%	20%	23.0	25%	28.7	35%	40.2	15%	17.2	5%	5.7		
<b>BOX 3; Other construction costs</b>	€ 75.1		0.0	6.3	16.1	12.4		13.8		16.6		7.9		1.9			
<u>Divided in:</u>																	
15% Contingency	€ 17.2	0%	0.0	10%	1.7	15%	2.6	20%	3.4	25%	4.3	25%	4.3	5%	0.9	0%	0.0
1% Integrated, specialized representational features	€ 1.1	0%	0.0	0%	0.0	0%	0.0	0%	0.0	10%	0.1	20%	0.2	70%	0.8	0%	0.0
4% Fees Projectmanagement	€ 5.3	0%	0.0	10%	0.5	25%	1.3	17%	0.9	15%	0.8	15%	0.8	15%	0.8	3%	0.2
14% Fees designers, engineers, consultants etc	€ 18.5	0%	0.0	20%	3.7	50%	9.3	15%	2.8	10%	1.9	5%	0.9	0%	0.0	0%	0.0
4% Permit and dues	€ 3.5	0%	0.0	0%	0.0	43%	1.5	29%	1.0	11%	0.4	9%	0.3	9%	0.3	0%	0.0
sum Consultancy user permits	€ 0.1	0%	0.0	0%	0.0	0%	0.0	0%	0.0	0%	0.0	0%	0.0	100%	0.1	0%	0.0
Total	€ 45.7		0.0	6.0	14.7	8.1		7.5		6.5		2.8		0.2			
1.03 Escalation estimated 3%	€ 29		0.0	0.4	1.5	4.3		6.4		10.0		5.1		1.7			
<b>Total</b>	<b>190</b>		0	6	22	58		100		157		182		190			
		3.3%	6.7%	10.2%	13.8%	17.6%	21.4%	25.4%	29.5%								

#### Comments

- Payments in year 2015 are due to the delay between the construction and the acceptance of payments.

## **Annex V**

### **Guidelines on contracts and expenditures**

#### **Contracts (purchase orders)**

1. The Project Director shall lead procurement (tendering) processes for the project and for preparation and negotiation of contracts for the project. The Project Board shall recommend signature of contracts to the Registrar.
2. Contracts above €500,000<sup>4</sup> or accessing the contingency fund shall require the agreement of the Oversight Committee, upon recommendation of the Project Board, prior to final approval by the Registrar.
3. Contracts that go beyond the allocated portion and may lead to the estimated total project budget being exceeded require the approval of the Assembly of States Parties.

#### **Expenditures**

4. All expenditures of the project shall be verified by the Project Board. The Project Board shall recommend the approval and payment of expenditures to the Registrar.

#### **Review**

5. With the purpose of avoiding undue delays in the execution of the project, the operation of the present guidelines on contracts and expenditures shall be reviewed after one year.

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<sup>4</sup> Consideration would need to be given to the fact that high-level expenditures could be fragmented over separate contracts.