

Resolution ICC-ASP/10/Res.6

Adopted at the 9th plenary meeting, on 21 December 2011, by consensus

ICC-ASP/10/Res.6 Permanent premises

The Assembly of States Parties,

Recalling its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1,¹ ICC-ASP/7/Res.1,² ICC-ASP/8/Res.5,³ ICC-ASP/8/Res.8,⁴ and ICC-ASP/9/Res.1,⁵ 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,⁶ the recommendations of the External Auditor⁷ as well as the reports of the Committee on Budget and Finance on the work of its sixteenth and seventeenth sessions and the recommendations contained therein,⁸

Reiterating its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, *emphasizing* the role of the Oversight Committee in implementing under its delegated authority any actions which might be needed to ensure that the project proceeds safely within budget as well as that the ownership costs of the permanent premises be as low as possible,

Recognizing the importance of effective and efficient decision-making, clear lines of authority, stringent risk identification and management, and strict control of design changes for ensuring that the project is delivered to cost, and *welcoming* the steps taken by the Oversight Committee to implement good governance arrangements for the permanent premises project, and the participation of the Court and the host State in this joint effort,

Welcoming the fact that 29 States Parties have committed to making a one-time payment in accordance with the principles contained in resolution ICC-ASP/7/Res.1, annex III, in an amount of €35.8 million, of which €26.5 million have already been received,

Noting that the Court has quantified on 1 March 2011 in the amount of €42.2 million the other costs related to the project but not directly related to the construction,

Noting that such costs concern elements that are user specific and include two components: (a) 3 gv, estimated at €22.1 million, for integrated user equipment, that is fixed elements integrated in the design; (b) 2 gv and other related costs, originally estimated at €20.1 million and later reduced to €19.8 million, for non-integrated user equipment, that is loose elements, and other costs such as moving, additional staff and consultancy fees,

Noting that at the end of the Final Design phase the ownership costs (depreciation, financial and operating costs) are currently estimated at €17 million per year,⁹

Welcoming the cost-review strategy put in place by the Oversight Committee to address 2 gv and 3 gv costs and to reduce their impact on the annual budgeting process, as well as to maintain the construction costs within the overall budget, and *encouraging* the continuation of a downward trend of these costs,

Stressing that the permanent premises shall be delivered at a good quality standard within the approved budget, and thereby that the Oversight Committee is mandated to ensure that the design and functionality requirements are constantly in line with the resources approved, and that the ownership costs are kept at the lowest possible level,

¹ *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.

² *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III.

³ *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.

⁴ *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II.

⁵ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part II.

⁶ ICC-ASP/10/22.

⁷ *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part C.1.

⁸ *Ibid.*, parts B.1 and B.2.

⁹ Report on the activities of the Oversight Committee, ICC-ASP/10/22, paras. 91-98.

Recalling that the trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and that voluntary contributions can also be provided through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee,

I. Project: budget and timeliness

1. *Welcomes* the report of the Oversight Committee and *expresses* its appreciation to the Project Board and the Oversight Committee for the progress made on the permanent premises project since the ninth session of the Assembly;
2. *Welcomes* the completion of the final design stage of the permanent premises project and *approves* the revised cash-flow scheme contained in annex I;
3. *Also welcomes* that the project continues to remain within the approved budget of €190 million;
4. *Approves* the strategy of the Oversight Committee to maintaining costs within budget, focusing on the overall budget rather than on the resources available during each phase and stage of the project;
5. *Approves* that non-integrated elements (2gv) and other related costs shall not exceed €19,8 million, and will be approved upon submission year by year in the Court's budget;
6. *Further approves* that the integrated elements (3gv) are construction costs and, as such, incorporated in the overall budget of €190 million, and *also approves* that such elements and their costs be entirely absorbed within the overall budget, so that the same is not exceeded;
7. *Authorizes* the Oversight Committee to review the design and/or the functionality requirements, as needed, in order to ensure a good quality building but keeping the budget within the approved cost and, to this end, *requests* the Project Director to ensure that changes to the project which might be needed can be implemented with due regard to the minimisation of additional costs related to delays and other factors, wherever possible, so as to ensuring a positive balance between additional costs and savings achieved through changes;
8. *Requests* the Oversight Committee, the Project Director and the Court, when making decisions on the design of the project, to take account of the consequences on the Court's future operating costs, and *stresses* that the project should go forward in such a way as to keep future operating costs of the permanent premises, including maintenance costs, at the minimum level possible given the necessary budgetary constraints;
9. *Takes note* of and *approves* the revised total gross floor area of no more than 52,450 square meters as a result of the Value Engineering conducted in March 2011;
10. *Notes* that the completion date for the permanent premises is September 2015, with readiness for the Court to take occupation thereof in December 2015, and *encourages* the Project Director, in consultation with the Oversight Committee, the Court and the host State to continue to identify ways to mitigate any delay and its consequences;
11. *Stresses* that the project budget will not be used to cover delays which might depend on the demolition schedule;
12. *Welcomes* the decision adopted by the Oversight Committee to procure the construction contract on a Best Value for Money basis, with a target cost mechanism which involves a guaranteed maximum price being agreed with a contractor, with incentives to continue to find additional savings during the construction period;

II. Governance

13. *Stresses* the importance of a shared vision and ownership of the project among all stakeholders, as well as of an effective coordination and communication between the Project Director, the Court and the host State at all levels and stages of the permanent

premises project and, in this regard, *approves* the revised governance arrangements adopted by the Oversight Committee, and *welcomes* the reported improved effectiveness of the decision making process;

14. *Stresses* the importance of a timely and full involvement and participation by the host State at all stages and levels of the project and *further notes* the importance of the commitment of the host State for ongoing cooperation;

15. *Reiterates* the important role of the Project Director in providing strategic leadership and 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, and *invites* the Registrar to delegate authority to the Project Director where necessary and at an appropriate level, in accordance with the Financial Regulations and Rules, with respect to engaging funds for the permanent premises project;

16. *Requests* the Project Director, together with the Court, to prepare recommendations, in accordance with resolution ICC-ASP/7/Res.1, annex V, paragraph 5, on ways to improve current guidelines on contracts and expenditures for the purpose of expediting the execution of the project, and to submit them to the Oversight Committee for approval;

III. Financial reporting

17. *Requests* the Project Director, in consultation with the Oversight Committee, in accordance with resolution ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;

18. *Requests* the Court to keep under review, in consultation with those States that commit to making a one-time payment, the schedule for receiving such one-time payments and to keep the Oversight Committee permanently informed thereof;

19. *Requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;

IV. Management of the project

20. *Requests* the Project Director to keep the project manual, together with a project plan under review and to report thereon to the Oversight Committee;

21. *Requests* the Oversight Committee to continue to develop and implement an audit strategy;

V. Voluntary contributions

22. *Reiterates* the invitation to members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

VI. Renewal of membership of the Oversight Committee

23. *Endorses* the recommendation of the Bureau, in accordance with ICC-ASP/6/Res.1, annex II, that the membership of the Oversight Committee, for the next term, be comprised of those States referred to in annex II to this resolution;

VII. Future reporting by the Oversight Committee

24. *Requests* the Oversight Committee to remain seized of this issue, to continue to provide regular progress reports to the Bureau and to report to the Assembly at its next session.

Annex I

Cash-flow scheme

Budget Permanent Premises project (in million euros)

	Total costs	Overall total	2009	2010	2011	2012	2013	2014	2015	2016	Total
			PD (*)	FD (**)	FD+ and tendering	Construction		Moving			
1. Construction Costs		136.1									
1a. Direct costs	121.8						36.5	48.7	36.5		121.8
1b. Indirect (excluded general site costs)	8.9						2.7	3.6	2.7		8.9
1c. Fees design team (after tendering)	5.4					1.7	2.3	0.8	0.5		5.4
2. Risks		32.9									
2a. Project risk (all issues incl. design or third parties)	27.6		-	-	-	1.0	7.3	10.3	9.0	-	27.6
2b. Client risk (outside project e.g. municipality)	5.3		-	-	-	0.2	1.5	1.1	2.5	-	5.3
3. Permit and dues		2.6									
Permit and dues	2.6					2.6	-	-	-	-	2.6
4. Fees		16.9									
4a. Design related	7.9		-	2.7	5.2	-	-	-	-	-	7.9
4b. Project management	6.6		0.9	0.7	1.4	1.0	0.3	1.0	0.8	0.5	6.6
4c. Other consultants	2.4		0.4	0.2	0.4		0.5	0.4	0.4	0.1	2.4
5. Other costs	1.5	1.5									
Other costs	1.5	1.5	-	1.5	-	-	-	-	-	-	1.5
Total	190.0	190.0	1.3	5.1	7.0	1.0	6.3	51.7	65.7	51.9	190.0
			1.3	5.1	7.0		7.3	51.7	65.7	51.9	
Cumulative			1.3	6.4	13.4		20.7	72.4	138.1	190.0	

Note: The above figures are estimates only and subject to change.

(*) PD: preliminary design stage.

(**) FD: final design stage.

Annex II

Members of the Oversight Committee*

African States

1. Kenya

Asian and Pacific States

2. Japan
3. Republic of Korea

Eastern European States

4. Romania

Group of Latin American and Caribbean States

5. Argentina
6. [...]

Western European and Other States

7. Germany
8. Ireland
9. Italy
10. United Kingdom

* As of 21 December 2011.