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**Assembly of States Parties**

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**Report on the governance arrangements for the permanent premises  
of the International Criminal Court\***

**1. Background**

1. In its report on the work of its sixth session,<sup>1</sup> the Committee on Budget and Finance (the Committee) requested the Court to review its internal governance arrangements for the permanent premises, with a view to ensuring that the Registrar is the accountable officer for the project within the Court and that he is supported by an appropriate, high-level steering group or other coordinating mechanism.

2. The Committee further invited the Registrar to submit proposals for consideration at its next session identifying the roles, responsibilities and lines of accountability for the permanent premises. The proposals should, in particular, cover the critical areas of design specification (the customer requirement); approval and authorization to commit (including delegated levels of authority); delivering the building to the agreed standards of timeliness, quality and cost; and providing (independent) assurance specifically on issues relating to the identification and management of risks.

**2. Introduction**

3. The present report is submitted in response to the Committee's request to the Registrar to review the internal governance arrangements for permanent premises. The governance arrangements set out the roles, responsibilities and lines of authorities and also cover the decision on the design specifications. The other areas which the Committee had requested to be covered by the report could only be touched upon at this stage. The Court will supplement the proposal as the project progresses and as more professional expertise becomes available to the Court.

4. It must be emphasized also that the governance arrangements cannot be defined in detail as they are dependent on a number of decisions that have yet to be taken.

5. First and foremost, the decision as to which option is to be realized (staying in the ARC, moving to the premises of the International Criminal Tribunal for the Former Yugoslavia (ICTY) or to another existing building, constructing tailor-made premises) will have an effect on the nature and scope of the decisions to be taken by the Court and thus on

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\* Previously issued as ICC-ASP/5/CBF.2/3.

<sup>1</sup> See ICC-ASP/5/1, para. 44.

the details of the governance arrangements. It will be recalled that while the Assembly of States Parties (the Assembly) has stated that purpose-built premises “would probably offer the most flexible solution in matching the requirements of a permanent Court, in terms of size, functionality and security”<sup>2</sup>, none of the different options has so far been excluded.

6. Second, should the Assembly decide that the option of purpose-built premises should be further pursued in principle, the question of who should be the project owner will also impact on the governance arrangements.

7. As a result, the proposal contained in this paper describes the mere skeleton structure that is to be put in place within the Court, regardless of the particularities of the project.

8. In addition, the proposed governance arrangements already take into account the post of Project Director<sup>3</sup> for Permanent Premises at the Court. This post has not yet been established. It is proposed in the 2007 budget and is therefore still pending approval. The description of the post has been worded in such a way as to allow its functions to be adapted, depending on the degree of necessary involvement of the Court in the project, once this has been decided.

9. It should be noted that, regardless of the Assembly’s decisions concerning the project and its ownership, the Court will have to further define its requirements and also to study the various aspects of project management.

### **3. Proposed governance arrangements**

#### **a. General**

10. Owing to the organizational structure of the Court and the nature of the project, there are different levels of decision-making, both internal and external.

11. A clear decision-making tree, with the principal decisions taken at the top and operational decisions left to the bottom, has to be respected in order to ensure an efficient development and implementation of the project.

12. Thus each decision-making level has to logically follow in the hierarchical structure. It is with this in mind that the present report also touches upon the decisions that are to be taken by the Assembly of States Parties.

13. The proposal has been carefully put together so as not to pre-empt any decisions to be taken by the Assembly of States Parties.

#### **b. Governance arrangements of other organizations**

14. The International Criminal Court is not the first international organization that is faced with the challenge of identifying, adapting or designing its permanent premises and the corresponding conception of governance arrangements. It would therefore be useful, as is often the case, to learn from the experiences of other organizations.

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<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November – 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.2, para 2.

<sup>3</sup> At the sixth session of the Committee on Budget and Finance as well as at the 7th meeting of The Hague Working Group of the Bureau, on 8 June 2006, the Court indicated its intention to establish the post of Project Director.

15. The following similarities can be identified when comparing viable governance arrangements for permanent premises in different organizations:

- High-level decision-making is usually entrusted to a committee consisting of representatives of the different stakeholders;
- An internal unit (project office) is specially dedicated to the project and provides basic decision and control;
- Professional project management consultants support the project office and provide the required expertise and manpower;
- Communication and cooperation within the organization and between all project participants seem to be essential for the success of the project.

16. The lessons learnt have been scrutinized to determine their relevance for the Court and considered in light of the Court's own philosophy.

**c. Principles underlying the proposed governance arrangements**

17. The governance arrangements define the framework for the realization of the permanent premises project. The philosophy underlying the governance arrangements is that the framework must embrace accountability, transparency, clear and lean decision-making, consistency and continuity, and the relevant expertise. Furthermore, the governance arrangements take the 'unique project approach' as described below.

18. All of this is to ensure that the process leading to the permanent premises of the Court is as efficient and effective as possible, and, most importantly, that decisions are taken on time.

**Accountability**

19. The decision-making bodies and officers have to be identified and the respective lines of responsibility defined. Responsibility and decision-making power must go hand in hand.

**Transparency**

20. The stakeholders but also the staff of the Court must be aware of how the relevant decisions are made and how the different interests, such as user requirements, flow into the project. This should not only ensure the buy-in into the project but also improve its quality.

**Clear, lean and timely decision-making**

21. The decision-making structure is to have as few layers as possible so as to ensure efficiency and effectiveness. For the same reason, the structure, processes and persons involved in the project must be identified in advance and must represent a solid and stable foundation. Each person within the decision-making chain is to be vested with the necessary power.

**Consistency and continuity**

22. The governance arrangements must create a mechanism of checks and balances that ensures consistency and continuity of the project.

### **Relevant expertise**

23. The relevant expertise is necessary not only to ensure informed decision-making but also to guarantee that these decisions are duly implemented and that the project is properly documented, communicated and monitored.

### **“Unique project” approach**

24. While due regard is to be given to the statutory provisions, it is envisaged that the permanent premises project will be independent of the Court’s regular operations. A structure will therefore be established that is independent of existing or future decision-making structures and procedures within the Court. The governance arrangements will therefore not be automatically complemented by the mechanisms that govern the Court in general, such as the Coordination Council.<sup>4</sup>

#### **d. Skeleton governance arrangements**

25. Under the skeleton governance arrangements there are four levels of decision-making. The Assembly of States Parties represents the top level, while the next three levels are within the Court (see annex).

26. The Assembly determines the framework of the permanent premises project and the framework will in turn determine the option that is to be realized (staying in the ARC, moving to the International Criminal Tribunal for the Former Yugoslavia or to purpose-built premises), identify the project owner, and set the budget ceiling.

27. The highest level within the Court is the executive level, which is the “Permanent Premises Committee” comprised of representatives of the main user groups, namely the Presidency, the Chambers, the Office of the Prosecutor, the Registry and the Secretariat of the Assembly. The Permanent Premises Committee will approve the requirements and take the high-level decisions that are determined upfront or identified by the Registrar in the course of the implementation of the project.

28. The Registrar acts as the project coordinator and represents the level between the executive level and the Project Director. The Registrar will serve as the focal point for all stakeholders outside the Court, such as the Assembly of States Parties, the Committee on Budget and Finance, the host State, the municipality, the neighbours, journalists and the public at large. As the coordinator, the Registrar will define the nature and scope of the responsibilities of the Project Director and will be involved in important decisions, such as the awarding of major contracts.

29. Even though the Project Director represents the third level within the decision-making chain, this position will be entirely dedicated to the project and therefore essential for its implementation. The Project Director will take the decisions necessary as the Head of the Project Office, prepare for and provide advice for higher level decision-making, act as liaison between eventual external consultancies and the Court, interact with other operational levels, and ensure the overall implementation of the project.

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<sup>4</sup> While the above-mentioned mechanisms do not form part of the decision-making structure, they are involved in the process by providing information or by being consulted. It should be recalled that the issue at stake in this report is the governance arrangements and not the internal consultation processes.

#### **4. Conclusion**

30. The proposed governance arrangements provide for three levels of decision-making within the Court. The Court is of the view that the submission of the written proposal in itself already marks an important step in the direction of accountability, transparency, and clear and lean decision-making and that it mirrors the “unique project approach”.

31. The continuity and consistency of the project are assured by the existence of the three layers and by the fact that the principal decisions are taken by a committee. As a result, decisions are not tied to one particular person and changes in top management will not result in an automatic change in the project.

32. The proposal to have major decisions taken by a committee is also based on the experience gained in other organizations.

33. The inclusion of a Project Director ensures that the process is provided with the necessary expertise.

34. As already indicated above, the structure will have to be further developed in light of the decisions that are still to be taken. In particular, such matters as conflict-resolution and auditing mechanisms, will have to be further examined.

## Annex

### Skeleton governance arrangements table

| Unit  | Decision  | “Inter alia” tasks   | Additional information   |
|---|---|--|--|
| <b>Assembly of States Parties</b>                     | <ul style="list-style-type: none"> <li>- Project (option to be pursued, approximate size, target date);</li> <li>- Project owner;</li> <li>- Budget ceiling.</li> </ul> |  | In the event that the Assembly of States Parties opts for tailor-made premises, another important decision is the selection of the architect. This decision can be taken outside the proposed arrangement. |
| <b>Executive level “Permanent Premises Committee”</b> | <ul style="list-style-type: none"> <li>- Requirements (general decisions);</li> <li>- Main features and decisions of high importance.</li> </ul>                        |  | The executive level consists of senior representatives of the main user groups: Presidency, Chambers, Office of the Prosecutor, Registry and Secretariat of the Assembly of States Parties.                |
| <b>Registrar as the “Project Coordinator”</b>         | <ul style="list-style-type: none"> <li>- Main decisions such as awarding of major contracts (together with the Project Director).</li> </ul>                            | <ul style="list-style-type: none"> <li>- Defines nature and scope of responsibilities of Project Director;</li> <li>- Provides regular information to stakeholders;</li> <li>- Submits requested reports and ensures the implementation of recommendations of the Committee on Budget and Finance and the Assembly of States Parties.</li> </ul>   |  |
| <b>“Project Director”</b>                             | <ul style="list-style-type: none"> <li>- Overall responsibility for project decisions, except those where higher levels are involved.</li> </ul>                        | <ul style="list-style-type: none"> <li>- Provides advice throughout all stages of the project, in particular with regard to the design of project management;</li> <li>- Ensures the implementation of the project, in particular the definition of the user requirements proposal;</li> <li>- Acts as liaison between eventual external consultancy services and the Court, and interacts with other operational levels (e.g. from the host State);</li> <li>- Heads the Project Office for Permanent Premises; Acts as the Secretary of the Permanent Premises Committee.</li> </ul> |  |