

**Assembly of States Parties**Distr.: General
13 November 2015

Original: English

Fourteenth session

The Hague, 18 to 26 November 2015

Report on the activities of the Oversight Committee*Executive Summary***A. Project objectives**

1. The construction, which was initially scheduled to end on 15 July 2015, was delayed, and the hand-over of the premises to the Court took place on 2 November 2015. This notwithstanding, the move of the Court will take place as scheduled, between 30 November and 11 December 2015.
2. Further to the 17 June 2015 request by the Project Director for the budget to be increased, the Assembly of States Parties approved via resolution ICC-ASP/13/Res.6 an increase in the unified budget envelope by €6 million. Instead, the Assembly approved expenditures at the lower level of €204 million, if the contract sharing mechanism produces the expected results, to be funded through reduction of the cash reserves in the Employee Benefits Liabilities fund and the Working Capital Fund.
3. The project costs remained within these figures. However, the Committee noted that pressure exists on the cost estimates, and that the final cost of the project will only be known upon the audit of the project accounts in June 2016.

B. Financing

4. An outstanding figure of €9.6 million remains to be funded in order to resource the approved expected costs of €204 million. While budget increases decided in 2013 and 2014 can be partly covered with the surplus of the financial years 2012 and 2014 (no surplus was available from 2013, because of the situation of the arrears), the remaining part (€1.3 and €4.3 million, for 2013 and 2014, respectively) as well as the amount approved in 2015 (€4.0 million) remain to be funded. The €4.0 million figure is addressed by the June 2015 decision of the Assembly to reduce the cash reserves of the Court. The Committee proposes that the remaining €5.6 million be funded through resort to the 2014 and following years, and that until such surplus becomes available, the Court be authorized to make cash advances from its reserves.

C. One-time payments and liquidation of contributions

5. In order to ensure that all States Parties receive a fair and equal treatment, and to minimize consequences for any unfulfilled pledges, the Committee proposes that the payment deadline be postponed until 1 September 2016, otherwise they shall be treated as arrears and not join the host State loan. The Committee recommends that the final recalculation of contributions should be conducted once the final audited project costs are known and upon expiration of the deadline to establish the amount drawn down from the

loan and to be reimbursed to the host State, as of 30 June 2016, following the formula that has been consistently communicated to and approved by the Assembly since 2009.

6. The Committee was unable to reach consensus on whether contributions have to be liquidated based on the current (2013-2015) scale of assessment, or on the one applicable at the time of final recalculations (2016-2018), which will have to be decided at the forthcoming session of the Assembly of States Parties.

D. Total Cost of Ownership

7. The Committee has conducted careful, inclusive, detailed technical and policy preparations over three years (2013-2015), and it now recommends that the Assembly approves at its forthcoming session the elements that are necessary for the new premises start to be used under the clear and unequivocal policy guidance necessary to establish the correct management framework, and rely on reasonable financing expectations. The elements to be approved in 2015 include: (a) A new governance structure, with a subsidiary representative body of the Assembly, to ensure that States Parties retain control of the policy and strategic aspects of the premises, including the use of the significant resources required; (b) A process (2016-2019) to revise the currently estimated €300 million cost over the next 50 years, and to adopt future decisions on the substance of the funding needs; (c) The future use of surplus, and of new States Parties contributions against the investment costs in the new premises.

Contents

	<i>Page</i>
I. Introduction.....	5
II. Overview of the status and cost of the unified project.....	5
A. Unification of the construction and transition projects.....	5
B. Status and cost of the construction project	5
1. Status of the project.....	5
(a) Timelines.....	5
(b) Budget	6
(c) Delegation of authority to increase the budget up to €4.3 million (2014).....	6
(d) Decision to increase the unified budget envelope by €6 million (2015).....	7
(e) Financial forecast	7
(f) Final cost of the permanent premises	8
(g) Audit of the project	8
2. Risks (Project reserve and use of additional reserve)	8
3. Compensation events.....	9
4. Capacity of the premises	9
C. Status and cost of the transition project	10
1. Budget	10
2. Value engineering of transition costs	10
D. Follow-up to resolution ICC-ASP/13/Res.6	11
E. Financing	11
1. Use of surplus.....	11
2. Financing of transition costs (€1.3 million) and of the delegated budget increase (€4.3 million).....	11
3. Financing of the 2015 approved budget increase (€6 million)	12
4. One-time payments.....	12
5. Financing mechanism	16
III. Ownership of the permanent premises.....	18
A. Ownership interests	18
B. Total cost of ownership	18
C. New States Parties contributions	20
D. Governing structure	21
E. Scale of assessment.....	21
IV. Other matters	23
A. Leases of the interim premises.....	23
B. Membership of the Oversight Committee.....	24
1. Election of the Vice-Chair.....	24
2. Renewal of the membership	24

V.	Financial reporting	24
A.	Project expenditure	24
1.	Appropriation for construction and transition budgets	24
2.	Expenditures against the construction and transition budgets	25
3.	Expenditures against the Court's annual budget	25
4.	Total projected cost of the project: unified construction and transition budget, plus the Court's budget (permanent premises)	25
5.	Utilization of the host State loan and interest accrued.....	26
6.	Trust fund	26
B.	One-time payments	26
Annex I:	Draft resolution on permanent premises	26
Appendix I:	Cash flow projection 2015-2016	26
Appendix II:	Decision on Total Cost of Ownership	26
Appendix III:	Roadmap.....	26
Appendix IV:	Contributions of new States Parties.....	26
Appendix V:	The Premises Committee.....	26
Appendix VI:	The Project Office	26
Annex II:	Status of one-time payments per 15 June 2015.....	27
Annex III:	Expenditures and future projected budgets for Major Programme VII-1 (Project Director's Office) per 26 October 2015.....	28
Annex IV:	Total projected cost of the permanent premises project per 31 August 2015 (in thousands of euro) - Expenditures and future budgets permanent premises project	29
Annex V:	Progress report for the Oversight Committee: Construction Project and Transition Project: ICC NPP Summary financial total overview.....	30
Annex VI:	Scale of assessment: comparison of 2013-2015 and 2016-2018 scales	31
Annex VII:	Lessons learned from Vienna and Geneva.....	33
Annex VIII:	Views of the Court.....	33
Annex IX:	Conclusions of the Working Group on Total Cost of Ownership.....	33
Annex X:	Comparison costs Interim and Permanent Premises	34
Annex XI:	Decision of the Committee of its Tenth Meeting (26 August 2015).....	35
Annex XII:	Decision of the Committee of its Thirteenth Meeting (28 September 2015)	37
Annex XIII:	Decision of the Committee on its resumed Fourteenth meeting (23 October 2015).....	39

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 thirteenth session of the Assembly held in December 2014, the Oversight Committee has held 27 meetings: on 5 February, 10 and 27 March, 9 and 20 April, 28 May, 2, 9, 16, 18, 22 and 23 June, 2, 10 and 30 July, 13, 17, 25 and 26 August, 11, 15, 18 and 28 September, 21 and 23 October, 9 and 10 November 2015 under the Chairmanship of Mr. Roberto Bellelli (Italy). The Committee submitted a report to the resumed thirteenth session of the Assembly.² The Assembly adopted resolution ICC-ASP/13/Res.6 on the permanent premises on 25 June 2015.
4. Mr. Roberto Bellelli briefed The Hague Working Group on developments related to the project on 4 occasions, on 26 May, 22 June, 8 July, and 29 September 2015. The Committee on Budget and Finance also received interim reports on 15 April 2015 and 19 September 2015, and a briefing by the Chair of the Committee on 21 September 2015.
5. The Project Director, Mr. Neil Bradley, resigned on 27 May 2015, effective on 3 July 2015. The Committee conducted a competitive recruitment process under the chairmanship of H.E. Mr. John Neary (Ireland) and the new Project Director, Mr. Kenneth Jeavons (United Kingdom), entered on duty on 11 August 2015.

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

A. Unification of the construction and transition projects

6. The construction and transition projects had been unified since 5 July 2013 into a single permanent premises project, by decision of the Oversight Committee in full agreement with the Court. The Project Director - as the manager of all aspects related to the unified project and previously separately governed under the respective authorities of the Committee and of the Registrar - reports to both the Committee and to the Registrar, on the operations and the finances of both the construction and the transition projects. These changes are reflected in the governance structure of the project.³

B. Status and cost of the construction project

1. Status of the project

(a) Timelines

7. The contract deadline completion on 15 July 2015, and the 1 September 2015 postponed deadline were not met. Although the construction project had been mostly completed by then there was still work to be done, in particular regarding testing and commissioning, as well as training of security officers. As a consequence, the take-over of the premises from the constructor was delayed until 2 November 2015. Nevertheless, the period between 1 September and December 2015 is still fully available for the Court to prepare for the move from the interim to the permanent premises. As a consequence, the

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 of the Assembly of States Parties to the Rome Statute of the International Criminal Court, resumed thirteenth session, The Hague, 24 – 25 June 2015* (ICC-ASP/13/20/Add.1), annex III.

³ Report on the activities of the Oversight Committee, ICC-ASP/12/43, paragraphs 43, 60-62, annexes I, II, and XI (resolution ICC-ASP/12/Res.2, paragraphs 14 to 24).

actual move of the Court has not been affected and will still take place between 30 November and 11 December 2015. Under the contract, the Contractor is bound to pay a penalty of €10,000 per day, which should compensate the extra costs caused by the delay after 1 September 2015. The construction project includes the guarantee period that will run up to one year after the handing over of the premises by the constructor to the Court, which has taken place on 2 November 2015.

(b) *Budget*

8. The unified project budget authorization developed as follows:

- 2010 = €190 million, excluding “other costs” (later, the transition costs),⁴
- 2013 = €195.7 million, of which €184.4 for construction and €11.3 for transition,⁵
- 2014 = €200 million, by delegation of authority to the Committee to increase the envelope up to €4.3 million,⁶
- 2015 = €206 million, with end project expenditures at €204 million (provided that the NEC 3 contract sharing mechanisms will produce the expected results).⁷

9. Including an estimated figure of €7.6 million from the regular annual budgets of the Court for organizational costs,⁸ the total project estimated costs currently stand at €211.6 million.

(c) *Delegation of authority to increase the budget up to €4.3 million*

10. At its thirteenth session, the Assembly delegated to the Committee the authority “to make decisions, as a measure of last resort and as necessary and appropriate, for any increases of the project budget up to €4.3 million in 2015, thus bringing the budget authorisation from €195.7 million up to a maximum of €200 million, to ensure the financial security of the project”.⁹

11. In accordance with the mandate of the Assembly,¹⁰ the Committee continued implementing control on expenditure through the established procedure, including by revising – upon advice of its independent Expert - the detailed information contained in the monthly progress reports and authorizing expenditures quality.

12. In the absence of a revised procedure, the Committee was presented with cost increases to be approved only once the obligations had already been entered which, in accordance with the previous procedure approved by the Committee in 2014,¹¹ was only possible for expenditures up to €150,000. As a consequence the Committee was called in a number of instances to only ratify decisions that had been taken by the Project Director.

13. As a result of these decisions by 15 April 2015 the total amount approved by the Committee amounted to €3,261,092, against the maximum €4.3 million delegated to it by the Assembly. As a result, the Committee noted that as at that date €1,038,908 was the remaining potential budget increase it could possibly approve until the end of the project, and that the financial security of the project would have to be ensured on this basis, i.e. within a financial envelope of no more than €200 million.

⁴ ICC-ASP/9/Res.1, paragraphs 3 and 16.

⁵ ICC-ASP/12/Res.2, paragraph 15.

⁶ ICC-ASP/13/Res.2, paragraph 17.

⁷ ICC-ASP/13/Res.6, paragraph 2.

⁸ See annex IV Such costs include the expected expenditure of €204 million, as well as the functioning of the Project Director’s Office and of the Project Office Permanent Premises, formerly established within the Registry and suppressed in 2013, following the unification of the transition and construction projects.

⁹ ICC-ASP/13/Res.2.

¹⁰ ICC-ASP/13/Res.2, operative paragraph 18.

¹¹ CBF/23/10, *Second interim report on the activities of the Oversight Committee*, paragraph 34: “The Committee authorizes expenditures pertaining to representational features and TCO investments, as well as any expenditure above €150,000. The Committee can also reject expenditures proposed by the Project Director under any other category, based on strategic or political considerations”.

14. Since 27 March 2015, the independent Expert of the Committee had noted the risk that a possible settlement of the pending issues with the general contractor (compensation events) through an adjudication procedure would have posed, as opposed to reaching a negotiated agreement at a fixed cost amount.

15. Upon an analysis of the different cost scenarios submitted to it by the Project Director, on 20 April 2015 the Committee decided to authorize the Project Director to negotiate with the General Contractor (“Courtys”) a wrap-up deal that would have settled the cost uncertainties at the maximum level of €3 million, i.e. within the maximum figure of the available €4.3 million reserve, thus ensuring project completion within budget authorization.

16. However, on 28 May 2015 the Project Director reported to the Committee that mistakes had been made in the calculations supporting the different scenarios, that would result in a cost overrun of possibly €7 million (or €2.7 above the reserve), which would have made the intended agreement impossible.

17. After further cost analysis, on 17 June 2015 the Project Director requested an increase of the budget of the unified project up to the worst-case scenario of the budget status, for a total amount of €8,787,249 (i.e., above the €4.3 million reserve).¹² This increase was intended to ensure that all possible obligations that may be necessary in the worst-case scenario would be covered and, thereby, avoid significant disruption because of delays in the transition project and the consequent inability of the Court to move to the new premises by December 2015.

(d) *Decision to increase the unified budget envelope by €6 million*

18. The Committee¹³ recalled the report of the Project Director on the status of the unified project,¹⁴ and his request¹⁵ contained therein for the budget to be increased in 2015 by an additional €8,808,725, and that €1,993,524 of this total might only be needed as an authorization to enter commitments after the end of July 2015.

19. Based on that request and the consultations among States Parties on 25 June 2015, via resolution ICC-ASP/13/Res.6, the Assembly, inter alia, approved an increase of the unified budget envelope for the amount of €6 million. The budget authorization would thus amount to a maximum of €206 million, but €1,993,524 will not be disbursed if the sharing mechanism of the contract with the General Contractor produces the expected results. The Assembly also decided that the budget increase would have no direct or indirect effect on the contributions of States Parties, and is only to be funded through reduction of the authorized level of the Court’s reserves (Employee Benefits Liabilities (EBL) and Working Capital Fund (WCF)).

(e) *Financial forecast*

20. In the monthly report issued by the Project Director’s Office and the Project Manager at 26 October 2015, under the best-case scenario, the positive saldo of the construction and transition projects would be €493,978 under the maximum €204 million expected expenditures taking into account an expected share of €2,370,398 under the NEC3 contract that, if realized, would only be capitalized at project end.¹⁶

21. Under the worst-case scenario, the unified project budget saldo would be negative, at €1,078,717 above the €204 million expected expenditures.

¹² Based on the budget status at 12 June 2015, the worst-case scenario was €6,793,725 plus the expected worst-case shared saving for the Court in an amount of €1,993,524.

¹³ *Report of the Chair of the Oversight Committee to States Parties*, dated 24 June 2015. *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, resumed thirteenth session, The Hague, 24 – 25 June 2015* (ICC-ASP/13/20/Add.1), annex III.

¹⁴ *Ibidem*, appendix II - *Report of the Project Director’s Office – Status of the Unified Project*, re-issued under the date 19 June.

¹⁵ *Ibid.*, appendix 1 - *Proposal for €8.7 million budget increase: options for the Committee*, dated 19 June 2015.

¹⁶ This scenario deteriorated further since the previous report updated at 3 August 2015, when there was a positive saldo of €3,309,151 for the construction budget, taking into account an expected share of €3,442,464.

(f) *Final cost of the permanent premises*

22. On 21 October, the Project Manager informed the Committee that the final cost of the project would only be known once the final accounts with the General Contractor will be closed, which depends on the following: (i) exact cost of the compensation events (changes), (ii) other costs encountered until completion, and (iii) outcome of negotiations between Courtys and its sub-contractors. Such elements will affect the sharing mechanism and, therefore, the financial result of the project. It will only be at that point that a “no surprises” stage in the accounts is achieved, which is expected to materialize by the end of March 2016.

(g) *Audit of the project*

23. The regular audit by the External Auditor takes into account the financial statements of the Court, up to 31 December of each year. Since the final project costs would only be available in the first quarter of 2016, the final audit of the project would be conducted only in 2017. In order for the Assembly to review the final project results in 2016, it would be necessary that the scope of audit for the project in 2016 include the accounts up to the end of March 2016, and be delivered by end of June 2016. At this point in time, which is the “Expiry date” under the Loan Agreement, it would thus become possible to conduct – on the audited final costs of the project - the final recalculation of the contributions due by States Parties. In order to reduce uncertainties, and avoid repeated calls for contributions to States Parties, the Committee is therefore recommending that:

- (a) The scope of the project audit in 2016 (which relates to the financial Statements for the year 2015) include the project accounts up to the costs become final (end of March 2016),
- (b) Recalculation of contributions are conducted as of 30 June 2016,
- (c) Contribution letters be sent as soon as recalculations are completed, and
- (d) The deadline for fulfilling the pledges of one-time payments (topping up contributions) is finally set at 1 September 2016.

2. **Risks (Project reserve and use of additional reserve)**

24. Foreseeable risks are included and financially addressed through the Project Reserve, known previously as the “risk register”, which is regularly updated by the Project Director and monitored by the Committee.

25. A restructured project budget was adopted by the Committee before the tendering of the construction project, in 2012, upon the recommendation of the Project Director. This budget structure provided the basis for the monthly progress reports by the Project Director (“Financial status” part of the reports) since the beginning of the construction.

26. In December 2014, the Assembly delegated the Committee to authorize, when necessary, a budget increase up to €4.3 million. As at 31 August 2015, the Committee had authorized a budget increase of €4,290,924. Based on the May-June revised cost analysis, the Assembly of States Parties at its resumed thirteenth session authorized an increase of the unified budget envelope in the amount of €6 million, bringing the total project budget to €206 million of which approximately €2 million shall not be disbursed if the sharing mechanism produces the expected results. The Assembly invited the Committee to continue implementing a strict control on expenditures within the approved strategic reserve of the project, including by authorizing in advance any obligations to be entered by the project.

27. As a result, the Committee has continued to review expenditures on every pending item, and conducted a detailed review of the contracts whose finalization was still pending at that time. Such review has included both contracts related to construction elements and to transition requirements, and is further detailed below.¹⁷

¹⁷ *Infra*, Follow up to resolution ASP/13/Res.6, Sub-Section D.

3. Compensation events

28. In the case of any change to the Works Information, or omissions or inconsistencies, the General Contractor is entitled to claim a compensation event, which, if accepted by the Project Manager (Brinks Groep, consultant of the Project Director's Office) results in an increase of the Guaranteed Maximum Price, and therefore of the cost of the project against the Project Reserve. As at 29 October 2015 of a total number of 347 compensation events, 261 have been agreed upon between the Project Manager and the general contractor, 54 have been rejected and 33 are pending. Several matters remain under discussion with Courtys in order to agree on a final cost.¹⁸ In case of disagreement, the contractor can refer the matter to adjudication (a pre-arbitral procedure under the NEC3 contract). Upon adjudication, either party would still be able to challenge the adjudicator's decision through an arbitration.

29. Although there is no indication of it at the moment, Courtys may decide to contest the rejection by the contract manager of compensation events claims. The Project Manager is confident that his decisions on rejected compensation events are correct. However, potential additional costs for the project resulting from adjudications and/or arbitration procedures are not included in the project reserve.¹⁹ Rejected compensation events amount to €4,280,000 million, of which several of them relating to security classification for a value of €2 million approximately.

30. Further compensation events can still be claimed by Courtys until 40 working days after the completion of the project (i.e., by 30 October 2015). New elements can come up at any time until there is final agreement with the contractor on the cost of the project.

4. Capacity of the premises (including potential growth of personnel)

31. Following a presentation by Chair of the Committee, at its twenty-second session the Committee on Budget and Finance²⁰ had requested the Project Director and the Court to provide an update on the current staffing capacity of the current design.²¹

32. On 2 July 2014, the Committee received a presentation by the Project Manager on the absorption of the Court's potential growth in light of the new existing floor plans approved and signed off by the top management representatives of the three organs of the Court. Such floor plans would not have changed anymore until the end of the construction and included sufficient flexibility to cope with the projected additional growth of the Office of the Prosecutor until the end of 2016. The floor plans added up to a total of 1,182 dedicated workstations, 98 available extra flexible workstations²² and 102 flexible office workstations for external defence teams,²³ making up for a total of 1,382 work stations against the approved 1,200 in resolution ICC-ASP/6/Res.1, annex I. An additional option for flexibility of the premises up to 1,519 workstations was also presented, as the maximum theoretical capacity of the premises under the current design, should all individual offices be converted into shared offices, and meeting room space reduced drastically to accommodate extra office space.

33. At the same meeting, the Court indicated, that in the next two years, if needed, it would look into other ways to utilize the space more efficiently such as introducing a flexibility factor, working from home, sharing workstations, etc., which was not needed at the moment. The Court stressed that it could fit 200 additional staff, on top of the Office of the Prosecutor's growth, within a few weeks, in the permanent premises, if needed in the future.

¹⁸ A pre-arbitral procedure provided for in the contract with Courtys, whereby an adjudicator is appointed by both the client and the contractor, who can accept or not the findings of the adjudicator on the respective claims.

¹⁹ At the date of finalizing this report, these potential additional costs could not be quantified.

²⁰ CBF/23/10, *Second interim report on the activities of the Oversight Committee*, dated 3 October 2014, paragraphs 51-53.

²¹ ICC-ASP/13/5, paragraph 85.

²² Workstations that can be used for temporary needs, such as interns and consultants, or durably assigned to specific sections in case of growth in staff resources.

²³ Workstations made available to external defence teams used on an ad-hoc basis subject to judicial activity).

34. The Committee notes that the staffing of the Court is to be influenced by the growth policy of the Court and, in particular, by the Court-wide effects of relevant policies, including on the Re-Vision project of the Registry, and the tri-annual strategic plans of the Office of the Prosecutor. In that regard, the Committee noted that a medium to long-term perspective is required, to appropriately consider whether and to what extent the current design of the permanent premises can support the growth strategies of the Court.

35. Consequently, the Committee draws the attention of the Assembly on the need to factor in the consideration of the growth policies of the Court also the consequences that these would have on the capacity of the premises to accommodate increased staff levels. The Committee also notes that the short to medium-term perspective also requires that the effects of elements such as the vacancy rate and postponement of recruitment proposed in the growth plans should be considered, as well as a more concrete definition of the scenarios hinted by the Court with reference to introducing a flexibility factor (working from home etc.).

C. Status and cost of the transition project

36. The transition project includes such costs as non-integrated user equipment, residual costs relating to the handing over of the interim premises, and moving costs. This project aims at ensuring that the Court be ready to take full occupation of the permanent premises by no later than December 2015, when the transition project will be completed.

37. The Project Director submitted to the Committee a list of changes following completion of the constructed premises (below, Follow-up to resolution ICC-ASP/13/Res.6, Sub-Section D).

1. Budget

38. The budget for the transition project, which amounts to €1.3 million, does not include an amount for any risks or unforeseen costs, which according to the decision to unify the construction and the transition projects, would need to be funded through the unified project reserve, if they materialize.

39. While a cost review process of the transition elements was established with the aim of reducing by June 2014 the project costs by €2 million,²⁴ the Committee had been informed²⁵ that the Project Director and the Court could not find room for additional savings in the transition budget.²⁶

2. Value engineering of transition costs

40. On 10 March 2015, the Project Manager had indicated that in relation to the transition project there was a potential overrun of €3 million caused by the different IT concept being implemented and different expectations as to what should be delivered for IT. As a result of the subsequent value engineering exercise the Committee was informed on 9 April that the transition project was again within the approved budget of €1.3 million.

41. This had been made possible due to the better information available as the project neared its completion, the prioritization of essential elements such as the IT infrastructure, and the commitment shown by the Court in trying to finalize the transition project within the approved budget.²⁷

²⁴ ICC-ASP/12/Res. 2, paragraph 15.

²⁵ ICC-ASP/13/39, *Report on the activities of the Oversight Committee*, paragraphs 37-38.

²⁶ *Ibid.*, paras 39-42. At the time of the unification of the projects, the transition costs had been reviewed downwards from the estimated original €20.1 million (as identified in 2011) down to an agreed budget of €1.3 million in 2013, although an estimated €1.9 for ICC staff costs – both for the transition and the construction activities – remained to be covered through the regular budget of the Court (MP-VII). At the time, there was an indication that further possibilities for savings might arise out of the procurement process, but that these would have in any case not amounted to the €2 million target reduction.

²⁷ CBF/24/20, paras. 31 to 34.

D. Follow up to resolution ICC-ASP/13/Res.6

42. As noted above,²⁸ following the decision of the Assembly to invite the Committee to continue implementing a strict control on expenditures within the approved strategic reserve of the project, including by authorizing in advance any obligations to be entered by the project, the Committee has not limited itself to continuing the review of expenditures of every single item, but has also conducted a detailed review of the contracts whose finalization was still pending at that time, as well as of newly proposed requirements.

43. The Office of the Project Director, together with the Court, conducted a review of the requirements of the unified project corresponding to obligations yet to be entered into, as mandated by the Assembly at its thirteenth session.

44. As to construction contracts, on 10 July 2015 the Committee, having been confirmed through expert advice that the requirements had been set at a minimum level of international standards, without being excessive, authorized the conclusion of the last two AV contracts for an amount up to €1,600,000.²⁹

45. As to the transition contracts, the Committee was presented on 18 September with a request for changes of the floor plans in three areas, that had to be implemented after the completion of the construction project. The areas concerned were the Presidency (relocation of one Vice-President Office to the same floor of the other Presidency's members, at the cost of €1,000), the Office of the Prosecutor-Information and Evidence Unit (conversion from closed offices to open plan, and isolation from the rest of the Office, at the cost of €99,000), and Defence Counsel (conversion from open plan to closed office, at the cost of €130,000). On 28 September the Committee adopted a reasoned decision [annex XII], whereby it did not approve the proposed floor plan changes, in an amount of €240,000, without prejudice for the Court to prioritize needs arising upon project completion within the annual budget envelope." The decision of the Committee took into account, *inter alia*, the details of the requirements, the fact that adopting further changes would have aggravated the risk that the unified project is completed at a higher cost than approved by the Assembly (€204 million), and that the requirements in questions are reportedly related to the functionality of the premises but would not impact on the ability of the Court to move in from the interim premises.

46. Overall, the Committee had reviewed a list of 15 contracts in the transition project over the period July-October 2015, totalling a value of €5.3 million. Upon detailed review of the requirements and receiving the information required, the Committee approved 7 contracts, while savings were achieved in the amount of €340,000. Further consideration of approval has been postponed for two contracts (in Facility Management, for €100,000, and Additional Furniture for €242,750), pending further clarification. Reasoned decisions of the Committee were adopted on 26 August 2015 [annex XI], 28 September 2015 [annex XII] and 23 October 2015 [annex XIII].

47. On 21 October, the Committee learnt that one of the two contracts whose approval was pending, had already been procured without the authorization of the Committee. While the Committee had received several of the answers to the questions raised as to the scope, requirements and the cost of this contract (€100,000), it had since 15 September it had requested to receive the draft contract, in order to be enabled to decide on the matter.

48. While initially the Committee had been provided only with the contract title ("Development and implementation of a visitors management system"), upon request it received explanations that, in reality, such contract was intended to cover a number of areas in Facility Management, including:

- (a) Contracts management;³⁰
- (b) FM Document management;³¹

²⁸ Section II.B.2 "Risks (Project Reserve and use of additional reserve)".

²⁹ Mr. Fathelrahman, Ms. Fulton, both from the Special Tribunal for Lebanon (STL) and Mr. Heijblok from the International Criminal Tribunal for the former Yugoslavia (ICTY).

³⁰ Including: Scope of works for contracts (new); Communication with vendors; cost forecasting for preventative/corrective maintenance, re-investment (new); Timelines and schedules (new); Lessons learned (new).

- (c) Meeting room booking system;³²
- (d) Visitors parking access control; and
- (e) General space management.³³

The Court had confirmed that only the first three areas were a priority, but stressed that, what was re-named as “Facilities management tools” was in reality a package to be procured without possibility to purchase only parts of it.

49. The Committee noted that, while its request for receiving the draft contract was not adopted in writing, it so decided in an unequivocal and open manner during discussions at its 14 September meeting. The Committee recalled the clear policy adopted, for no further obligations being entered in any of the unified project areas without its prior authorization, and expressed its dissatisfaction for the contradiction with the policy directives of the Assembly.

50. On 21 October the Committee also received a requested from the Project Director for entering into obligations up to €9,559 against the "additional furniture" budget line. Upon further justifications received, on 23 October the Committee decided to approve the procurement of two items (in total €40,559),³⁴ and to not approve other six items (in total, €49,000),³⁵ without prejudice for the Court to fund such requirements through the regular budget, according to its priorities [annex XIII].

E. Financing

1. Use of surplus

51. In 2013, on the occasion of the unification of the construction and transition projects, the Assembly had decided to fund transition costs up to €5.7 million with the appropriation of the surplus pertaining to the financial years 2012 to 2014, to be accounted for as one-time payments.³⁶ As an amount of €4.4 million has been funded in 2014 with the surplus pertaining to 2012, a remaining figure of €1.3 million remained to be funded with the expected surplus from 2013 and 2014.

2. Financing of transition costs (€1.3 million) and of the delegated budget increase (€4.3 million)

52. On 10 March 2015, the Court informed the Committee that for 2013, the provisional cash surplus amounted to €-5.4 million, because of the outstanding contributions from previous years.³⁷ As a result, there was no surplus available to fund the remaining €1.3 million needed for the transition project. The Committee is aware that it could resort to the cash reserves of the Court, in accordance with the relevant Assembly resolution,³⁸ if the project cash-flow so requires.

³¹ Including: User permits from the Host State (new); Fire prevention Permits (new); Elevator and other equipment (safety) Licenses (new); Equipment and installation warranties (new); User and maintenance manuals for all equipment and installations (new).

³² Including: (a) Implementation of control of meeting rooms and conference centre, and (b) Management of Conference Services Support (Catering, Cleaning, Layout...).

³³ Including: office layouts, flex desks, common and public areas.

³⁴ "Adjust large conference table room 1506 instead of procuring a new one", valued €12,451, and "Systems furniture (chairs, desks, coffee tables, coat racks), for €28,108.

³⁵ Lecterns courtrooms (€10,000), Seat cushions in holding cells (€8,000), Cabinets for binders in court rooms (€10,000), Witness Waiting Rooms Fitting out (kitchenettes) (€18,000), Lamellas Security Control Room (€500), Storage capacity between desks in Security Control Room (€2,000).

³⁶ ICC-ASP/12/Res.2, paragraph 16. The Assembly had approved to use €5.6 million of projected construction savings to fund part of the transition budget; the remaining €5.7 million would be funded via the surpluses of the regular budget for the years 2012-2014.

³⁷ Regulations 4.6-4.7 FRR.

³⁸ ICC-ASP/12/Res. 2, paragraph 17: "Further approves that cash advances to the project budget may be made from the cash reserves of the Court in the period 2014 to 2016, in order to meet any cash needs prior to the availability of the surplus pertaining to the financial years 2012 to 2014, as a temporary and prudent measure of last resort, for a limited amount, and with an agreed schedule for restitution".

53. As regards the financing of the €4.3 million the Committee recalled that it had expressed a preference for a solution similar to that followed for financing the transition costs, i.e. resorting to surplus based on the amended Regulation 4.7 FRR.³⁹

54. At its resumed thirteenth session, the Assembly had reiterated that the surplus pertaining to the financial period 2014 shall be allocated to funding the remaining transition costs up to €1.3 million, to be accounted for as one-time payments, and decided that any additional surplus pertaining to the 2014 and following financial periods shall be allocated to offset the budget increases approved by the Oversight Committee pursuant to its delegated authority, up to the amount of €4,300,000.⁴⁰

55. As at 23 October 2015, the estimated 2014 surplus funds amounted to between €1.8 and €2.0 million, while its precise unaudited amount is expected to be known in December 2015. At this stage the Court expects that the amount required for the remaining transition costs of €1.3 million should be available from the 2014 surplus funds as of the end of February 2016 and subject to the audit which will be completed by mid-2016.

3. Financing of the 2015 approved budget increase (€6 million)

56. At its resumed thirteenth session, the Assembly had decided that the additional €6 million of the budget envelope would only be funded through reduction of the authorized level of the Employee Benefits Liabilities Fund and the Working Capital Fund.

57. The Committee recalled that the Bureau would decide on the level of reduction, as appropriate, of the Employee Benefit Liabilities and the Working Capital Fund, upon a review by the External Auditor and recommendations of the Committee on Budget and Finance.⁴¹ On 20 October 2015 the Committee was informed that the report by the External Auditor was being prepared and would be submitted to the Bureau by 13 November 2015.

4. One-time payments

58. The Committee noted that 17 States Parties who had pledged to make a full or partial one-time payment appear not to have fully paid their contributions to the project, upon the expiration of the 15 June 2015 deadline to do so. The total outstanding amount, as at 16 June 2015 is €719,075 [annex II]. The Committee noted that this matter will have to be looked at in light of the potential consequences attached by the Assembly to the expiration of the deadline for fulfilling the pledges (15 June 2015), as well as to the final adjustment of contributions, that will be known only upon the project end.⁴²

59. On 2 July 2015 the Committee was informed by the Project Director of a new interpretation of the financial formula for the one-time payments, according to which States Parties that had opted in the system would need to top-up their contributions for a total amount of approximately €3.5 million, or 3%. The Project Director's presentation maintained that because of the formula used about how the host State loan discount had been applied, States Parties having opted for one-time payments had underpaid approximately three per cent of their assessed contributions. The discrepancy would have been created by the fact that the discount that had been granted in advance in respect of one-time payments received according to the calculation method was higher than what should have been granted applying the formula included in the host State Loan Agreement.⁴³ This was because the system in place applies the discount to the assessed contributions of States Parties instead of doing so to the unused part of the loan. This different interpretation would have created the three per cent discrepancy.

60. The formula applied to States Parties at the time of communicating their share in the project budget, if they had opted to pay their contributions in advance, included a discount

³⁹ CBF/24/20, paras. 26 and 27.

⁴⁰ ICC-ASP/13/Res.6, operative paragraph 14.

⁴¹ *Ibidem*, operative paragraphs 5-6.

⁴² ICC-ASP/12/Res. 2, paragraph 26.

⁴³ According to the Project Director's Office, the manner in which the one-time payment system was operationalized (explanatory notes included in the report of the Oversight Committee ICC-ASP/8/34 and resolution ICC-ASP/11/Res.3, annex II), applied a financial formula that was different than the one included in the host State loan agreement, which was implicit in resolution ICC-ASP/7/Res.1, annex II (see annex I).

of 17.5 per cent, based on the subsidy that the host State would have provided under the 2009 Loan Agreement. While States Parties who opted in have pledged and paid their contributions calculated on this basis, the new proposed formula would apply to them a different discount, in the amount of approximately 14.5 per cent, thereby requiring them to pay the three per cent difference. The Committee has noted the advice of the External Auditor in this regard, whereby – assuming that there had been a miscalculation⁴⁴ – it is recommended that an adjustment to the calculations be made without delay, with calls to one-time payers in order for them to adapt their contribution by an extended deadline for payment.⁴⁵ The Committee also noted the recommendation of the Committee on Budget and Finance, whereby it should be avoided issuing to States Parties repeated updates on the one-time payments, which could create confusion and inconvenience. In that regard, it was recommended that, since the project was nearing completion, “any possible lack of clarity be discussed between the Court and the host State prior to the final adjustment being issued.”⁴⁶

61. The Committee has reviewed the matter in light of the existing obligations under the 2009 Loan Agreement, and of the practice of the States Parties in approving and operationalizing such an agreement.⁴⁷

62. Upon request filed by the Committee on 15 September 2015, a legal advice has been delivered by the project consultant, the Dutch legal firm Houthoff Buruma.⁴⁸ The consultant concluded that the formula applied was inconsistent with the obligations entered in the Loan Agreement, leading to a gap between the discounts applied to one-time payers and the subsidy to which the host State is bound. In the views of the consultant, additional funds should be raised from States Parties who opted for the one-time payments,⁴⁹ in order to bridge this gap.⁵⁰

63. The issue has been discussed with the host State, via its representative to the Committee, and during informal consultations held at the end of October.

⁴⁴ ICC-ASP/14/12, *Financial statements of the International Criminal Court for the year ended 31 December 2014*, paragraphs 38-39.

⁴⁵ *Ibidem*, paragraphs 94-101 and Recommendation 2.

⁴⁶ ICC-ASP/14/15/Add.1, paragraph 32, *Report of the Committee on Budget and Finance on the work of its resumed twenty-fourth session*, dated 18 August 2015.

⁴⁷ Including, e.g., ICC-ASP/7/Res.1, and annexes II (*Criteria applicable to the agreement on the loan*) and III (*Principles for one-time payments of the assessed share*); ICC-ASP/8/Res.8; ICC-ASP/11/Res. 3, annex II (*Explanatory note on one-time payments*), and Appendix I (*Criteria applicable to the agreement on the loan, and principles for one-time payments of the assessed share (extract)*, as contained in resolution ICC-ASP/7/Res.1), as well as Appendix II (examples). See also the relevant reports of the Oversight Committee to the Assembly of States Parties and the Committee on Budget and Finance.

⁴⁸ Houthoff Buruma, *Memo*, dated 15 October 2015.

⁴⁹ *Ibidem*, paragraph 5.7.

⁵⁰ *Ibid.* paragraph 3.3. The consultant found that the provision on the subsidy in the Loan Agreement seemed rather clear, so as it would be unlikely to be interpreted in a way that the subsidy must be increased to close the gap originated by the discounts applied. Instead, the advice submitted to the Committee suggested “a political negotiation” with the host State to achieve a renegotiation of the Loan Agreement, so as to increase the subsidy (paragraph 5.4). While indicating that, according to the Loan Agreement one-time payers should top-up their contributions by means of a final adjustment, the consultant acknowledged that the provisions and explanations in the relevant resolutions “do not explicitly refer to an adjustment for this purpose, but seem mainly aimed at adjustment directly related to the final determination of the building cost and the loan under the Loan Agreement using the current formula for the calculation” of the discounts [...]. A very literal interpretation of the resolutions would therefore preclude the adjustment of the one-time payments to close the gap.” However, the consultant also found that an interpretation should prevail that is based on the purpose of the one-time payments, “i.e. to transfer the relevant part of the subsidy to the State Party that makes a one-time payment” (paragraph 5.8). With additional advice, the consultant also clarified that the conclusion whereby “States Parties who have opted for one-time payments are obliged to provide the additional funding required to correct the inconsistency between the formula applied and the obligations entered into the Loan Agreement” takes into account the resolutions and the consistent practice, in light of the rules of international law (Houthoff Buruma, *Memo*, dated 23 October 2015, paragraph 3.3 and 4.1). In particular, according to the consultant, States Parties, with the 2008 resolution (ICC-ASP/7/Res.1 dated 21 November 2008, paragraphs 3 and 5) that authorized entering the Loan Agreement, “did agree on the criteria applicable to the Loan Agreement and, as a parte thereof, the subsidy of 17.5 per cent of the non-utilized part of the loan. This, together with the possibility of “adjustment once the final cost of the project is determined” [...] and the purpose of the Discounts [...] would support the argument that the ICC being entitled to request that” one-time payer States should provide additional funds. Instead, the consultant attached “less weight” to the later resolutions of the Assembly, by which the Loan Agreement was implemented into Discount 1 and 2, and that imply that the adjustment at project end cannot be used to close the gap between the subsidy and the discounts (*ibidem*, paragraph 3.2).

64. The Committee considered that the Loan Agreement was operationalized through the adoption of the current formula since 2009,⁵¹ which had been reiterated in 2012.⁵² The current formula had been drafted by the Project Director in consultation with the host State and the Court, discussed in the Committee and with the Committee on Budget and Finance, adopted by the Assembly and communicated to all States Parties on the basis of the decisions adopted by the Assembly. The Committee stressed that, in the period 2009 to 2014, the subsequent resolutions of the Assembly⁵³ and their preparatory work as highlighted in the reports of the Committee to the Assembly of States Parties⁵⁴ and other work in preparation thereof,⁵⁵ are all an integral part of the consensus regime established by the States Parties as regards the loan entered with the host State, the subsidy contained therein, and the reimbursement thereof.

65. In that regard, the Committee considered that – since the formula has been applied in the period 2009-2015 consistently with the resolutions adopted by the Assembly, the implementation of the Loan Agreement cannot be considered as a result of a miscalculation or, otherwise said, that a different formula should have been applied instead.

66. The Committee noted that the proper legal framework was established by the applicable rules of international law, with regard to the legal value of the consensus resolutions adopted by the Assembly, as well as the constant practice of all States Parties, which has implemented the decisions of the Assembly consistently with the current formula. In particular, the conclusions of the consultant have been reached also by attaching different value to the resolutions adopted by the Assembly before (2008) or after (2010 and 2012) the adoption of the Loan Agreement (2009) so that, while the former resolution was considered in order to stress the purpose of the loan, the latter ones were not considered to interpret the same purpose in light of the intention of the Parties, as manifestly and formally captured in the consistent practice of all States Parties.

67. In that regard, the Committee also highlighted the seemingly inconsistency of the restated conclusion of the consultant – that one-time payer States should provide additional funding,⁵⁶ with the “additional remarks”⁵⁷ of the legal advice received.

68. The Committee concluded that the advice of the consultant that one-time payer States Parties are bound to top-up their contributions as an effect of the approval to the 2009 Loan Agreement contained in the 2008 resolution (ICC-ASP/7/Res.1), is contradicted by the further advice that all States Parties are also bound by the 2010 and 2012 resolutions (ICC-ASP/8/Res.8 and ICC-ASP/11/Res.3) which, instead, exclude that obligation by implementing the former resolution and the Agreement.

69. The Committee also noted that:

- (a) The implementation of the Loan Agreement should follow the ordinary criteria of interpretation, including good faith, context and practice of States;
- (b) No State Party had ever raised any reservation on the resolutions adopted by the Assembly, or on the implementation thereof through the current formula;
- (c) If the new formula was applied, a discount of 14.5% instead of 17.5% would be applied, in contrast with all documentation, including the Loan Agreement;

⁵¹ ICC-ASP/8/Res. 8, paragraph 3. The resolution recalls explicitly (PP 2) ICC-ASP/8/34, *Report on the activities of the Oversight Committee*, annex II (*Explanatory note on one-time payments*).

⁵² ICC-ASP/11/Res.3, annex II, *Explanatory note on one-time payments*, paragraph 2..

⁵³ ICC-ASP/8/Res.8, *One-time payments for the permanent premises*, dated 25 March 2010; ICC-ASP/11/Res.3, dated 22 November 2012, annex II - *Explanatory note on one-time payments*, appendix I - *Criteria applicable to the agreement on the loan, and principles for one-time payments of the assessed share (extract)*, as contained in resolution ICC-ASP/7/Res.1, and appendix II - *Examples: States Parties one Time Payment/Project Financing Calculation Scenarios*.

⁵⁴ ICC-ASP/8/34, *Report on the activities of the Oversight Committee*, dated 4 November 2009, annex II – *Explanatory note on one-time payments*, dated 4 November 2009.

⁵⁵ Oversight Committee, *Sub-group on the financing of the project*, dated 26 May 2009.

⁵⁶ Houthoff Buruma, *Memo*, dated 23 October 2015, paragraph 3.3.

⁵⁷ *Ibidem*, paragraph 5.1. The consultant concluded that the resolutions of the Assembly, in light of general rules of international law, are not binding on States Parties unless the Rome Statute or other normative instruments so provide. However, it is also argued that resolutions in “internal affairs (e.g. budget consideration and/or decisions)” would be legally binding on all States Parties and, hence, the “resolutions regarding one time payments can be considered to pertain to internal affairs [...] and therefore can be argued to be legally binding”.

- (d) If a lower 14.5% discount was applied according to the new formula, the purpose itself of the subsidy provided for by the Loan Agreement, i.e. create advantageous financial situations for States Parties in order to facilitate the self-financing of the project, would be contradicted.

70. Based on the above reasoning, the Committee concluded that the assumption in the recommendations of the External Auditor and of the Committee on Budget and Finance – that there had been a miscalculation in the contributions assessed in advance to States Parties accessing to the one-time payment system – does not reflect the applicable law. In that regard, the Committee concluded that the Loan Agreement has been consistently interpreted by the Assembly in a manner that leaves no doubts to the willingness of all States Parties to adopt the current formula.

71. For this reason, the gap between the discounts applied in the formula and the 17.5% subsidy indicated in the Loan Agreement should be considered a result of a common and consensus decision of States Parties, affirmed in the relevant resolutions and in the consequent practice of their implementation. As a result, no further contribution against the project costs can be assessed, on the basis of a different formula, against States Parties who:

- (a) Have opted for the one-time payment system, or, by not electing this option,
- (b) Have accessed to the host State loan.

72. Consequently, any difference between the subsidy and the discounts applied to one-time payers should not form part of the reimbursement of sums drawn down from the loan.

5. Financing mechanism

73. Drawing on the elements indicated above, as at 23 October 2015, the financing needs to the project amount to a total of **€9.6 million**, as a result of the following decisions taken by the Assembly:

- (a) 2013 = €1.3 million

Out of the approved €1.3 million budget for the transition project, €5.6 million were funded from savings in the construction project, and €4.4 million from the 2012 surplus.⁵⁸ While there was no positive surplus in 2013, until such a time the expected 2014 surplus becomes available cash advances can be made by the Court. The funding mechanism approved requires that the outstanding amount is funded through the 2014 surplus, while cash advances can be made until such a time when surplus funds become available. While the latter will become technically available only upon the audit, in April 2016, its provisional amount is clear by ASP/14. Against such amount, the Court can safely make cash advances.⁵⁹ In 2014, the Assembly reaffirmed that the 2013 outstanding funding needs of €1.3 million had to be covered through the 2013 surplus.⁶⁰ Since such surplus did not become available because of the negative impact of arrears, in 2015 the Assembly reaffirmed that the €1.3 million figure has to be funded through the 2014 surplus.⁶¹

- (b) 2014 = €4.3 million

The Committee was delegated authority to approve budget increases for additional €4.3 million, so as to raise the unified budget envelope up to a maximum of €200 million, if needed.⁶² In 2014 the Assembly did not make any specific to funding channels for this delegated budget increase, it In June 2015, the Assembly decided that any additional surplus pertaining to the 2014 and following financial periods shall be allocated to offset the budget increases approved by the Oversight Committee pursuant to its delegated authority, up to the amount of €4,300,000.⁶³ However, if no outstanding contributions are cashed before the end of the year (and made immediately available), surpluses from 2014 onwards will not be meet the

⁵⁸ ASP/12/Resolution 2, paragraph 16.

⁵⁹ *Ibidem*, paragraph 17.

⁶⁰ *Ibidem*, paragraph 19.

⁶¹ ASP/13/Resolution 6, paragraph 14.

⁶² ASP/13/Resolution 2, paragraph 17.

⁶³ ICC-ASP/13/res.6, paragraph 14.

cash-flow needs of the project. This effectively creates a financing gap of €4.3 million. The Committee proposes that the funding mechanism is authorized explicitly by the incoming Assembly's decisions, by means of cash advances from the Court's reserves to temporarily fund the €4.3 million until surplus becomes available, subject to the necessary safeguards for the financial security of the Court, according to the advice that the External Auditor and the Committee on Budget and Finance will be providing.

(c) 2015 = €4.0 million

At its resumed session, in June 2015, the Assembly approved a budget increase up to €206 million, while expecting that expenditures would remain within €204 million, in case the sharing mechanism of the contract with the General Contractor produces the currently expected results.⁶⁴ The Assembly also decided that the newly authorized budget envelope be only funded through a reduction of the Employee Benefit Liabilities fund and the Working Capital Fund.

74. The Court informed the Committee that the 2014 surplus would amount to €2.1 million, which will become available upon the audit of the 2014 accounts, expected in spring 2016. The Court also informed that:

- (a) The current level of the EBL was at €6.6 million, since a total of €4.6 million had been utilized (of which €1.1 for the purpose for which the reserve was established, and €3.5 million for the Re-Vision project) out of €1.2 million,
- (b) The current level of WCF was at €7.4 million.

75. The Committee recalled the ongoing mandate conferred by the Assembly to the External Auditor and to the Committee on Budget and Finance to consider the appropriate level of the Court's reserves, and the need to ensuring that drawing down from such reserves for the purposes of the project should in any case preserve the financial security of the operations of the Court.⁶⁵

76. In the latter regard, the Committee also noted that the use of the reserves of the Court for the permanent premises project principal funding is limited to the 2015 decision of the Assembly to fund additional expenditures up to €4 million, while for the 2013 and 2014 budget increases – totaling €5.6 million – regular funding is expected via 2014 and following years' surplus.

77. The Committee further noted that the potential stress that resorting to the Court's reserves for the purposes of the project is a matter that has to be properly addressed in the context of the evaluation of the causes that lead to the formation of surplus, including the expected cash flow and the contributions of States Parties.

78. As a result of the 2013, 2014 and 2015 decisions of the Assembly on the project budget, and of the current status of surplus and reserves of the Court, the Committee proposes a **funding mechanism** based on the following elements:

- (a) Funding needs are €9.6 million (€1.3+€4.3+€4.0 million);
- (b) Surplus from 2014 €2.1 million can entirely fund the outstanding 2013 needs (€1.3 million), and partly the outstanding 2014 needs (€4.3 million);
- (c) The remaining outstanding needs for the 2014 decision (€4.3 minus €0.8 million = €3.5 million) can be funded through the 2015 and following years surplus;
- (d) The 2015 approved budget increase of €4.0 million shall be funded through the EBL (where a total of €6.68 million is available) and WCF (amounting to €7.4); and
- (e) To bridge the funding gap between the deadlines for payments in the project cash flow and the time when 2014 and following years surplus will become available, it should be authorized the resort to the reserves of the Court, with the same mechanism adopted to fund the 2013 unified budget envelope.

⁶⁴ ASP/13/Resolution 6, paragraph 2.

⁶⁵ See also, ICC-ASP/14/15, Report of the Committee on Budget and Finance on the work of its Twenty-Fifth session, dated 22 October, paragraph 176.

III. Ownership of the permanent premises

79. As of 2016 the permanent premises will be part of the assets of the Court. At the same time, the new premises represent a significant economic investment of the current membership of the Rome Statute, and will entail in the future both important responsibilities and opportunities for all States Parties. Related governance and strategic matters have emerged during the unified project lifetime, and have now to be addressed so that the Assembly can make decisions before 2016.

A. Ownership interests

80. While the Committee had in particular considered the ownership responsibilities related to the future value and functionality of the premises (Total Cost of Ownership), in consultation with States Parties it also identified the following matters related to the operation of the premises:

- (a) Access to the premises, including routes (staff entrance/main entrance), parking lots (visitors/staff), security screenings at the access points (Ambassador/delegates), badges (issuance, duration and use);
- (b) Use of the facilities, including meeting rooms (e.g., precedence in booking and functionality, including seatings and AV), supporting rooms (for use of delegations), courtroom for meetings of the ASP (convertible main courtroom).

81. However, since such matters mostly refer to States Parties' enhanced access to the premises, at the current stage they can be addressed through appropriate consultations between other Assembly's organs and the Court. In the future, the Assembly might identify the most appropriate entry-point for these and any other States' related matters, also taking into account the scope of the mandate of the new governance structure.

B. Total cost of ownership

82. The Committee had advanced consideration of the future costs for long-term maintenance and capital replacement throughout the period 2013-2015. The final report prepared by the technical Working Group on the Total Cost of Ownership ("working group") steered by the Project Director was presented to the Committee on 2 April 2015 and submitted to the twenty-fourth session of the Committee on Budget and Finance.⁶⁶

83. The technical proposal of the working group favoured a multi-annual approach to funding, as opposed to funding costs in the relevant annual budgets, with a cost estimate of around €300 million over a 50 year period, based on maintenance conditions applied in the Dutch market. The working group proposed creating a fund where a yearly assessed contribution of €4.3 million would be accumulated starting in 2017, to be managed by the Court and without the establishment of a dedicated governance structure of the Assembly.

84. The Committee had reserved its position on the technical proposal received and, upon further consideration, submitted its draft decision to the advice of the twenty-fifth session of Committee on Budget and Finance.⁶⁷ The advice received by the Committee⁶⁸ has been taken into account in refining the elements of the present report and preparing the decisions to be submitted to the Assembly for adoption.

85. The Committee considered all different options with regard to the long-term responsibility of States Parties for the ownership of the premises, including the implications in terms of governance, organization, cost, and funding.

86. From general perspective, the Committee is convinced that the ten-year long experience of the Assembly's structures in dealing with the project should be treasured, so as to ensure that the responsibilities of States Parties are discharged with processes that

⁶⁶ CBF/24/20, *Interim report on the activities of the Oversight Committee*, dated 15 April 2015, paragraphs 42-51.

⁶⁷ ASP/14/28, *Second interim report on the activities of the Oversight Committee*, dated 24 September 2015, paragraphs 46-57, and annex II.

⁶⁸ ICC-ASP/14/15, *Report of the Committee on Budget and Finance on the work of its twenty-fifth session*, dated 22 October 2015, paragraphs 170-174.

enable them to retain ownership and control, ultimately resulting in both agreed and visible measures of support to the Court, and sustainable budgeting and financing practices. At the same time, the Committee stresses that the mandate of the Court does not appear to be consistent with the need to manage complex and significant assets, which should be done at the relevant level of expertise available on the market, while with the appropriate strategic in-house input.

87. As a consequence, when further considering the proposal of the working group, the Committee has found that some elements thereof should be taken into account to ensuring that the future organization of the long-term maintenance and capital replacement is pursued at a professional level, which is also expected to be cost effective. On the other hand, the Committee has looked into the other two aspects of the matter – funding and governance – from the perspectives of political feasibility and of adequate control, while taking into account the need to guarantee the asset value and functionality. The Court expressed its views in annex VIII of this report.

88. The Committee decided to submit the following recommendations:

- (a) *Governance.* A structure should be established to enabling States Parties to retain a firm control over strategic decisions that will affect the long-term cost, functionality, and value of the premises;
- (b) *Organization.* The organization of the maintenance and the capital replacements at the new premises requires a professional start-up phase. While this justifies outsourcing, over time the Court will have to take strategic responsibilities, and be able to conduct in-house part of the required activities;
- (c) *Costs.* The significant costs estimated by the working group over the long-run need to be revised, in light of the accepted practice in the public international sector;
- (d) *Financing.* Funding the long-term costs of the premises by means of a Fund with the scope and purpose proposed by the working group would not be a politically viable option;
- (e) *Sustainable funding.* Extra-budgetary resources (annual surplus, and contributions from new States Parties) are proposed for a decision that is expected to cover in the medium term at least the low to medium cost spikes. However, full financial security requires that the funding of the four major long-term capital replacement events expected over the next 50 years is timely addressed. In that regard, since the issue is not of an immediate nature and further work is still required to safely devise a sustainable funding mechanism, the Committee is recommending that the analysis of a sustainable use of budgeted resources (assessed contributions) takes place together with a cost review in the period 2016-2019.

89. The required ownership role of States Parties, the lessons learned, and the apparent significant scope for organizational and functionality economies over the long-term suggest that, at this stage, the Assembly should adopt policy decisions for a safe and sustainable governance and financial context that will ensure that the premises, over the long run, provide performance and appropriate preservation of the investment value, at the same time attracting constant support by all stakeholders.

90. The External Auditor has considered that “the strategic management of the construction project by the Oversight Committee was a key factor in the project’s success” and that “its monthly meetings allowed accurate monitoring of the operational, budgetary and financial aspects of the work to be carried out”.⁶⁹

91. Based on this positive experience, the External Auditor has recommended that the Oversight Committee be transitioned to a future representative organ of States Parties, within a clear framework aiming at preventing ambiguities between governance and management at the ICC.⁷⁰

⁶⁹ ICC-ASP/14/12, *Audit report on the financial reporting and management of the permanent premises project, 2014 financial year*, dated 4 August 2015, paragraph 117.

⁷⁰ ICC-ASP/14/12, *Audit report on the financial reporting and management of the permanent premises project, 2014 financial year*, dated 4 August 2015, paragraphs 117-121, *Recommendation 5*. It is referred to alternative

92. The Committee on Budget and Finance has also recognized that the experience of the Oversight Committee bears witness to the benefits of strategic guidance from the Assembly, and of the need to have timely access to needed information.⁷¹

93. At the same time, the Committee on Budget and Finance had also shared the External Auditor's caveat, that the risk of interference in the practical management of the premises should be avoided.

94. The new governance structure recommended by the Committee takes into account the lessons learned and indications received by it, as well as the need for States Parties to act as policy decision-makers, at the adequate level, while availing themselves of the required technical expertise and advice of existing oversight mechanisms.

95. The complete reasoning of the conclusions reached by the Committee on Total Cost of Ownership is contained in annex II of the resolution (see annex I to this report).

C. New States Parties contributions⁷²

96. Differently from other international organizations, the premises of the Court are being provided - and their value will in future be maintained - by assessed contributions of the States Parties. Based on the sovereign equality of States, since it is the membership of the Rome Statute that benefits of the premises, the same membership should also equally participate in the liabilities (costs) for such asset. Absent a participation in the permanent premises cost by new States Parties, they would unfairly benefit from the contributions of those States that had acceded earlier to the Rome Statute.

97. Also, current States Parties have either contributed in advance against the investment costs (one-time payments) or will be contributing over the long-term, in a period of thirty years, through the reimbursement of the host State contracted loan. Should new States Parties accede over the same period, they would be benefiting of an asset they do not contribute to, while other States will still be paying for it.

98. The argument that new States Parties required to pay for the permanent premises project costs would be assessed retrospectively of such costs does not take into account the category of costs in question. Since the project is providing an asset whose expected lifetime is well into the future, a cost-sharing mechanism would also be fair for all those States that would join the Court within the asset's life.

99. It can be considered whether contributing against the asset value might be a discouraging factor for States to accede to the Rome Statute, as their financial obligation would be aggravated. However, at the current stage of the Court's universality, the choice to participate into the Rome Statute's system seems hardly to be dependent on financial considerations. The advantages that membership brings to States Parties should rather be assessed against the political debate and the consensus that the Court may attract for the accomplishment of its mission. However, the Court was of the view that, if such contributions were requested, it would undermine the universality.

100. Based on the appropriateness of sharing the permanent premises project costs among the present and future membership, the Committee believes that a fair, sustainable, simple, functional and transparent mechanism could be based on the following:

- (a) New States Parties should be assessed against the total cost of the permanent premises project calculated as follows:
 - (i) Inclusive of total project costs⁷³ (including aggregated construction, transition, and organizational costs),⁷⁴ over the project period 2008-2016,

solutions as to either give responsibility to the CBF (as it is the case for the renewed Audit Committee), or by establishing an independent committee.

⁷¹ ICC-ASP/14/15, *Report of the Committee on Budget and Finance on the work of its twenty-fifth session*, dated 22 October 2015, paragraph 173.

⁷² CBF/24/20, *Interim report on the activities of the Oversight Committee*, dated 15 April 2015, paragraph 56.

⁷³ Currently estimated at €214,617,600, including €206,000,000 for the unified project budget, and €7,617,600 for budgeted organizational costs. See CBF/24/20, *Interim Report on the activities of the Oversight Committee*, annex III.

⁷⁴ Expenditures of PDO (MO VII-1) and the Court (POPP) throughout the project, 2008-2016.

- (ii) Lifetime of asset = 100 years,⁷⁵
- (iii) Value of asset = 100% over the first 10 years (2016-2025),⁷⁶ and 90% after that,⁷⁷
- (b) Payment of new State Parties' contributions should be treated as follows:
 - (i) Based on the scale of assessment applicable at the time of accession of any new State Party,
 - (ii) Not lead to any re-calculation of contributions assessed for other States Parties,
 - (iii) Credited to a Capital Fund to cover the long-term costs of the permanent premises,
 - (iv) Made in 1 to 10 annual instalments, starting from the date of entry into force of the Rome Statute.⁷⁸

101. The possibility for new States Parties to avail themselves of the current host State loan does not appear to be a viable option, since these contributions might fall outside the scope of the loan and of the subsidy provided therein, and because the repayment date of the loan, in 2016, is now approaching ("Expiry date" for the rent of the interim premises).

D. Governing structure

102. As noted above,⁷⁹ the future role of the Assembly of States Parties as regards the most important asset to ensure the functionality of the Court should be devised based on relevant lessons learned and expectations. While both the value of the premises and their functionality for the Court should be maintained throughout the lifetime of the asset, the definition of these parameters is a policy matter, since it affects the contents of the financial obligation of States Parties. In that regard, the cost implication for present and future States Parties will be significantly affected by any decision on what is the value at which the new premises have to be maintained, what requirements of the Court are to ensure that the premises enable it to achieve its objectives.

103. In all these respects, the Committee recommends that the Assembly takes decision, as to the future governance and long-term preservation of the value of the permanent premises, based on lessons learned.

104. The Committee also stresses that **a decision by the Assembly is required at this very 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 rely on reasonable financing expectations.** A detailed justification of the proposal submitted to the Assembly by the Committee is attached [annex V of the resolution (see annex I to this report)].

E. Scale of assessment⁸⁰

105. Based on the Loan Agreement, the Assembly had approved – since the very beginning of the project⁸¹ – that contributions be fixed based on the scale applicable once

⁷⁵ The period is based on the experience of FIPOI (*Fondation des Immeubles pour les Organizations Internationales*), a Swiss foundation that runs a multi-billion asset value for the purpose of hospitality of International Organizations.

⁷⁶ It is assumed that no long-term maintenance and capital replacement will take place in the period. See annex II of the resolution (in annex I to this report) containing the draft decision on Total Cost of Ownership, paragraph 6 (e).

⁷⁷ The percentage is arbitrary, taking into account that it is not possible at this stage to anticipate what will be the choices that will be made over the long period.

⁷⁸ Article 126, paragraph 2, of the Rome Statute.

⁷⁹ See paragraph 79 above.

⁸⁰ CBF/24/20, *Interim report on the activities of the Oversight Committee*, dated 15 April 2015, paragraph 55.

⁸¹ ICC-ASP/7/Res.1, annex III, *Principles for one-time payments of the assessed share*, para. 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"; paragraph 7: "The adjustment [...] calculated at the end of the project [...] will [...] Take

the final cost of the project and the amount of the host State subsidy are known (i.e. in 2016),⁸² by deducting the subsidy from the capital. However, the 2012 Explanatory note indicated that the scale of assessment will be the one applicable at the completion of the project (December 2015), without further changes.⁸³

106. The External Auditor had recommended that the scale of assessment applicable to fix the contribution of States Parties at project end be that of the 2015 handover, when the permanent premises are expected to be occupied by the Court, i.e. the current 2013-2015 scale, instead of that that would become applicable as of 1 January 2016.⁸⁴

107. The Committee on Budget and Finance had shared the same approach and conclusions, recommending that the date that would determine the applicable scale of assessment should be that of when the Court takes possession of the premises.⁸⁵ In that regard, the Committee on Budget and Finance had echoed concerns on the implementation of the changed scale of assessment (from 2007-2009 to 2013-2015),⁸⁶ where the justification of the proposed new criterion as a way to preventing further misunderstandings and controversies transpired from the discussion leading to the relevant recommendation.⁸⁷

108. The Court has expressed the view that the recommendations of the External Auditor and of the Committee on Budget and Finance to use the 2013-2015 scale of assessment should be followed. However, the Registry's Legal Office has concluded that it is not for the Court to take a legal position on this matter, as it is ultimately for States Parties to decide on their financial contribution to the permanent premises.

109. In advance of the thirteenth session of the Assembly, the Oversight Committee had made explicit that following the recommendations of the External Auditor and of the Committee on Budget and Finance would have entailed assessing contributions at a date (2015) different from that applicable at the termination of the rent of the interim premises (2016), as foreseen in the Loan Agreement, which might have raised concerns as to the fairness of the system.⁸⁸ However, at that stage (2014) the Committee had not yet taken a

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".

⁸² ICC-ASP/8/Res. 8 (para. 3), ICC-ASP/11/Res.3 (para. 17), ICC-ASP/12/Res.2 (para. 25), and ICC-ASP/13/Res.2 (para. 21) all provide that: "[one time-payments] shall be subject to an adjustment once the final cost of the project and the full amount of the host State subsidy are known in order to ensure that all States Parties receive a fair and equal treatment". This decision was based on *Loan agreement between the State of the Netherlands (Ministry of Foreign Affairs) and International Criminal Court*, dated 23 March 2009, Article 3(c): "A one-time payment shall be subject to an adjustment once the final cost of the project and the amount of the host State subsidy are known". According to the Loan Agreement, the amount of the loan to be reimbursed is determined at the date when the rental agreements for the interim premises will expire (March/June 2016) by deducting the subsidy from the capital *Loan agreement*, Article 1.1: "Expiry date [is] the date on which the present or future rental agreement of the Court concerning the present temporary housing at Maanweg 174 and/or Saturnusstraat 9 in The Hague expires"; Article 5.3.a: "On the Expiry date the State and the Court will jointly determine the total amount of the Loan as at the Expiry date"; Article 5.3.b.: "If the amount of the Loan is not the entire Capital, then the Loan is to be reduced with a subsidy amount which is equal to : (Capital -/- the Loan) x 17,5%".

⁸³ ICC-ASP/11/Res. 3, annex II, *Explanatory note on one-time payments*, paragraph 2(b), stated that changes in the scale of assessment after the completion of the project (December 2015) will not be applicable to the calculation of the States Parties' assessed contributions to the project.

⁸⁴ ICC-ASP/13/12, *Financial statements for the period 1 January to 31 December 2013*, dated 15 August 2014: Recommendation 1 and paragraphs 20-27.

⁸⁵ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 - 17 December 2014* (ICC-ASP/13/20), vol. II, B.2, *Report of the Committee on Budget and Finance on the work of its twenty-third session*, paragraphs 162-164.

⁸⁶ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Thirteenth session, New York, 8 - 17 December 2014* (ICC-ASP/13/20), vol. II, B.1, *Report of the Committee on Budget and Finance on the work of its twenty-second session*, paragraph 88: "The Committee expressed its concern about implementation of the resolutions relating to the recalculation of States Parties' contributions and the interest charged for the Permanent Premises Project, and requested the Oversight Committee and the Project Director's Office (PDO) to further justify their approach to the recalculation of contributions and interest received and paid, and to report on these issues at the Committee's twenty-third session."

⁸⁷ ICC-ASP/13/15 *Report of the Committee on Budget and Finance on the work of its Twenty-Third session*, paragraph 161: "The Oversight Committee and the Project Director explained that the recalculation was done for transparency and to enable States Parties to know in advance the effect of the change in the scale of assessment, as well as to ensure the fair treatment of all States Parties, in accordance with the relevant Assembly resolutions."

⁸⁸ CBF/23/10, *Second interim report on the activities of the Oversight Committee*, paragraph 98: "The Committee considered that the scale of assessment to be applied at project end is the one which allows re-calculation of the contributions based on the total amount of sums drawn down from the host State loan at the "Expiry date", i.e. at the termination of the interim premises leases as laid down in the Loan Agreement between the host State and the

final position, and rather indicated that the recommendations of the Auditors and of the Committee on Budget and Finance would be further considered.⁸⁹ Consequently, the Assembly only decided to take note of the recommendations of the External Auditor and of the Committee on Budget and Finance.⁹⁰ Since the scale of assessment applicable at the Court will change after 31 December 2015, a final decision of the Assembly on this matter is needed at the fourteenth session of the Assembly.

110. The Committee has not been able to achieve consensus on this matter. Some of the members held the views that the final calculations should take place by applying the scale of assessment that will be adopted for the period 2016-2018.⁹¹ Other members were of the views that such calculations should take place according to the current scale of assessment, applicable to the period 2013-2015.⁹²

111. Consequently, due to the implications of the decision to be taken, the Committee decided to defer to the Assembly an alternative language for the resolution to be adopted, reflecting either of the available options.⁹³

IV. Other matters

A. Leases of the Interim Premises

112. The Committee noted that since the landlords of the two buildings where the interim premises are located had not agreed to terminate the leases as of 31 December 2015, the Court had included in the proposed programme budget for 2016 a total of €1,759,000⁹⁴ to cover the cost of leasing the Haagse Arc building until 31 March 2016 and the Haagseveste building until 30 June 2016,⁹⁵ as well as an additional €200,000 for preventative maintenance costs for the two buildings.⁹⁶

113. The Committee is aware that the amount of the rent for the said period had been previously indicated in €1,615,000⁹⁷ and that the host State has accepted to extend their contribution up to 50 per cent of such costs.

114. While the Committee had taken note of the outcome of the discussions with the landlord and that an early termination of the leases was not agreed, it also stresses that preventative maintenance costs are a separate matter, since it should relate to the actual use of the buildings in 2016. As the Court will be vacating the interim premises at the end of 2015, budgeting costs for preventative maintenance of such premises would seem inconsistent with the factual situation. The Committee also noted that preparation for transition of the interim premises' possession to the landlord and through the host State

Court. The Committee notes that the current system had been agreed since 2009 [Loan agreement, paragraph 3(c) "A one-time payment shall be subject to an adjustment once the final cost of the object and the amount of the host State subsidy are known"] and was intended to ensure that all States Parties receive a fair and equal treatment based on the final cost of the project and on the amount of subsidy pertaining to the host State loan. At the same time, if the system was changed in the proposed direction and the Court finally be unable to vacate the interim premises by 31 December 2015, States Parties would be assessed their contributions against a scale different from that applicable at the "Expiry date", which might raise concerns as to the fairness of the system".

⁸⁹ CBF/24/20, *Interim Report on the activities of the Oversight Committee*, 15 April 2015, paragraph 55.

⁹⁰ ICC-ASP/13/Res. 2, paragraph 20: "Takes note of the recommendation of the external Auditor and the Committee on Budget and Finance, according to which the liquidation of States Parties' contributions for the permanent premises project be based on the scale of assessments applicable for 2013-2015 [ICC-ASP/12/15, para. 164.]"

⁹¹ Such views were supported by the documents referenced in footnotes [65 and 66] above.

⁹² Such views were supported by the documents referenced in footnote [67] above.

⁹³ An overview of the effects of the application of the different scales of assessment is also attached to this report (annex VI).

⁹⁴ ICC-ASP/14/10, *Proposed Programme Budget for 2016 of the International Criminal Court*, paragraphs 730-731 refer to €1,759,000 (including €13,400 for the Haagse Arc and €945,600 for the Haagseveste building), while the following different amounts are indicated elsewhere: €1,756,000 (in ICC-ASP/14/12, *Financial statements of the International Criminal Court for the year ended 31 December 2014*, para.14.3), and €1,615,000 were previously reported to the Committee on Budget and Finance (see para. 65 below).

⁹⁵ ICC-ASP/14/10, *Proposed Programme Budget for 2016 of the International Criminal Court*, paragraphs 42, 727, 730-731: €13,400 for the Haagse Arc and €945,600 for the Haagseveste building.

⁹⁶ *Ibidem*, paragraph 732.

⁹⁷ CBF/24/20, *Interim report on the activities of the Oversight Committee*, dated 15 April 2015, paragraphs 52-53.

would also affect any responsibility for preventative maintenance. In that regard, the Committee asked the Court to discuss the matter with the relevant counterpart.

115. At its twenty-fifth session, the Committee on Budget and Finance recommended to the Assembly that the requested €200,000 not be approved “until the full scope of work and its cost is known”⁹⁸.

B. Membership of the Oversight Committee

1. Election of the Vice-Chair

116. On 21 October, the Committee elected Mr. Jan-Philipp Sommer (Germany), as Vice-Chair for the period until the conclusion of the fourteenth session of the Assembly of States Parties, in the understanding that he would also remain available for ensuring the continuity of the work until the end of 2015.

2. Renewal of the membership

117. As the two year mandate of the ten members of the Oversight Committee shall expire on 26 November 2015, there is a need to renew the membership of the Committee. Pursuant to ICC-ASP/6/Res. 1, annex II, paragraphs 4 and 5, the ten members of the Committee are elected by the Assembly, upon recommendation of the Bureau, taking into account regional representation, and their mandate is renewable every two years.

118. On 30 September 2015, interested States Parties were invited to submit their nominations to the Chair of the Committee by 30 October 2015. As a result of that consultation process, the Chair would convey a proposal to the Bureau recommending to the Assembly the names of ten States Parties to elect as members of the Oversight Committee for a two-year term, commencing on 27 November 2015.

V. Financial reporting

A. Project expenditure

1. Appropriation for construction and transition budgets

119. The construction costs were initially set by the Assembly at no more than €90 million at 2014 prices.⁹⁹ 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 €84.4 million.

120. The unification of the construction and transition project enabled to better manage transition costs, including the cost of non-integrated user equipment (and excluding the Court’s staff costs), set them at €1.3 million (down from the €8.5 million estimate at the time), and partly fund them through the savings identified in the construction budget (€5.6 million).¹⁰⁰ The remaining €5.7 would be financed from the Court’s surpluses from the 2012 to 2014 budgets.¹⁰¹ An amount of €4.47 million pertaining to the 2012 surplus¹⁰² was transferred to the project in April 2014.

121. The construction budget of €84.4 million together with the transition budget of €1.3 million would be financed under the overall unified project budget of €95.7 million.

⁹⁸ ICC-ASP/14/15, *Report of the Committee on Budget and Finance on the work of its Twenty-Fifth session*, dated 22 October, paragraph 81.

⁹⁹ Resolution ICC-ASP/6/Res. 1, preambular paragraph 10.

¹⁰⁰ Report on the activities of the Oversight Committee, Addendum, ICC-ASP/12/43/Add.1.

¹⁰¹ Resolution ICC-ASP/12/Res.2, annex II, Amendment to the Financial Regulations and Rules – Use of surplus, Regulation 4.7.

¹⁰² 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.

An additional reserve (€4.3 million) was approved by the Assembly of States Parties in December 2014¹⁰³.

122. 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 shall not be disbursed if the sharing mechanism of the contract with the General Contractor produces such result.¹⁰⁴

123. The Assembly of States Parties requested the Project Director's Office to report separately on expenditures of the construction and transition projects in advance of the twenty-fifth session of the Committee on Budget and Finance.¹⁰⁵

124. The total appropriation as at 26 October 2015 is €204,000,000 at 2015 price level. The budget appropriations and actual expenditures as at 26 October 2015 for both the construction and transition projects are further detailed in annex V to this report.

2. Expenditures against the construction and transition budgets

125. The 2015 expenditures for the construction and transition projects as at 26 October 2015 amount to €44,212.9 million.

126. The total expenditures for the project (from 2008 until 26 October 2015) amount to €186,255.3 million, of which €178,229.9 million in the construction project, and €8,025.4 million in the transition project. Further details are presented in annex V.

3. Expenditures against the Court's annual budget

127. The expenditures on Major Programme VII-1 Project Director's Office (permanent premises), for the period 2008 until 26 October 2015 (expressed in thousands of euro) amounts to €4,994.6 million broken down as follows: €3.8 in 2008, €17.4 in 2009, €95.4 in 2010, €86.4 in 2011, and €86.7¹⁰⁶ in 2012, €98.4 for 2013, €1,235.2 for 2014 and €991.3 for 2015 as at 26 October 2015. Further details are presented in annex III.

128. 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 are now fully incorporated into Major Programme VII-1. Expenditures for this sub-programme from 2008 until 2013 amounted to €2,021.2 million.

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

129. 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. It has also resulted in substantial savings on the Court's staff costs, which in April 2013 had been estimated at €3.2 million and were then reduced down to the overall level of €1.5 million, spread out over 2014, 2015 and 2016.

130. Annex IV 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 €211.6 million. This cost figure is composed of a maximum of €204 million for the construction and transition projects and an estimated figure of €7.6 million from the regular annual budgets of the Court.

131. The €7.6 million in the Court's annual budgets include Major Programme VII-1 and former sub-programme 3770.

¹⁰³ Resolution ICC-ASP/13/Res. 2, paragraph 17.

¹⁰⁴ Resolution ICC-ASP/13/Res. 6, paragraph 2.

¹⁰⁵ Resolution ICC-ASP/13/Res. 6, paragraph 9.

¹⁰⁶ Increase due to the merger of the Project Director's Office and the POPP.

5. Utilization of the host State loan and cash-flow

132. The estimated total quarterly loan draws for the remainder of the project are reflected in annex I of the resolution (see annex I to this report), which, in accordance with resolution ICC-ASP/6/Res.1, annex VI, details the cash-flow overview including its provenance.

133. The interest accrued in 2014 on the host State loan amounted to € 1,060,595.89. This amount was paid to the host State in early 2015, in accordance with the provisions of the Loan Agreement.

134. The cash-flow overview provided in annex I of the resolution (see annex I to this report) to this report shows that additional funding for the construction and transition budgets will be needed as from November 2015.

6. Trust fund

135. 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. So far no voluntary contributions from governments, international organizations, individuals, corporations or other entities have been received.

B. One-time payments

136. As at 31 December 2014, 65 States Parties had selected the one-time payment option and pledged to make payments to a value of €4,769,453. At 16 June 2015, the one-time payments actually received amount to €4,107,108. This amount consists of one-time payments, partial or in full, received from 62 different States Parties. Further details are provided in annex II to this report.

Annex I**[Draft] Resolution on permanent premises**

[See ICC-ASP/14/33/Add.1]

Annex II

Status of the one-time payments per 15 June 2015

# States Parties	ID	Pledged date	Pledged OTP Contributions	Status of one-time payments	Amount remaining	Overpayment	Comments
1 Albania	3	19/05/2010	24,645	24,645			Additional payment made after change of scale of assessment
2 Andorra	4	18/02/2010	19,685	19,685			Additional payment made after change of scale of assessment
3 Antigua and Barbuda	5	25/07/2013	3,482	1,741	1,741		Outstanding amount including change of scale of assessment
4 Argentina	6		1,064,075	743,641	320,434		Outstanding amount due to change of scale of assessment
5 Australia	7	18/02/2010	5,108,955	5,108,955			Additional payment made after change of scale of assessment
6 Barbados	9	29/04/2013	19,685	19,685			Full payment made after change of Scale of Assessment
7 Benin	12		7,440		7,440		Outstanding amount including change of scale of assessment
8 Bolivia	13		22,165	13,729	8,436		Outstanding amount due to change of scale of assessment
9 Bosnia & Herzegovina	14			41,850			Full payment made after change of Scale of Assessment
10 Burkina Faso	18		7,440	4,576	2,864		Outstanding amount due to change of scale of assessment
11 Cambodia	20	18/02/2010	9,920	2,288	7,632		Outstanding amount due to change of scale of assessment
12 Canada	21	18/02/2010	7,350,410	7,350,410			Additional payment made after change of scale of assessment
13 Chad	108		4,960	2,281	2,679		Outstanding amount due to change of scale of assessment
14 Chile	113		822,740	822,740			Additional payment made after change of scale of assessment
15 Colombia	23		637,980	637,980			Additional payment made after change of scale of assessment
16 Costa Rica	25	17/11/2012	93,620	93,620			Additional payment made after change of scale of assessment
17 Cyprus	27		115,785	115,785			Full payment made after change of Scale of Assessment
18 Czech Republic	118		950,770	950,770			Additional payment made after change of scale of assessment
19 Democratic Republic of the Congo	28		7,440	6,864	576		Outstanding amount due to change of scale of assessment
20 Denmark	29	17/10/2013	1,662,685	1,662,685			Full payment made after change of Scale of Assessment
21 Djibouti	30	19/05/2010	2,480		2,480		Outstanding amount including change of scale of assessment
22 Ecuador	32		108,345	108,345			Additional payment made after change of scale of assessment
23 Estonia	33	01/11/2013	98,580	98,580			Full payment made after change of Scale of Assessment
24 Finland	35		1,290,503	1,290,503		(12,063)	Overpayment due to change of scale of assessment
25 Gabon	37		49,290	18,220	31,070		Outstanding amount including change of scale of assessment
26 Georgia	39		17,205	17,205			Additional payment made after change of scale of assessment
27 Germany	40		17,590,485	17,590,485			Full payment made after change of Scale of Assessment
28 Greece	42		1,571,545	1,571,545			Full payment made after change of Scale of Assessment
29 Hungary	46		655,185	558,303	96,882		Outstanding amount due to change of scale of assessment
30 Iceland	47	19/05/2010	84,661	84,661		(18,166)	Overpayment due to change of scale of assessment
31 Ireland	48		1,029,665	1,029,665			Full payment made after change of Scale of Assessment
32 Italy	49	11/02/2010	11,621,392	11,621,392		(664,597)	Overpayment due to change of scale of assessment
33 Jordan	50		54,250	54,250			Additional payment made after change of scale of assessment
34 Latvia	51		115,785	41,483	74,302		Outstanding amount due to change of scale of assessment
35 Liechtenstein	54	19/05/2010	22,881	22,881		(716)	Overpayment due to change of scale of assessment
36 Lithuania	55		179,800	179,800			Additional payment made after change of scale of assessment
37 Luxembourg	56		199,485	199,485			Additional payment made after change of scale of assessment
38 Malta	59		39,370	39,370			Full payment made after change of Scale of Assessment
39 Mauritius	61		32,085	32,085			Additional payment made after change of scale of assessment
40 Mexico	104	18/02/2010	5,164,300	5,164,300		(626,830)	Overpayment due to change of scale of assessment
41 Mongolia	62			7,440			Full payment made after change of Scale of Assessment
42 Montenegro	107	18/02/2010	12,245	12,245			Additional payment made after change of scale of assessment
43 Namibia	63		24,645	24,645			Full payment made after change of Scale of Assessment
44 Netherlands	65	08/10/2013	4,272,802	4,272,802		(198,472)	Overpayment due to change of scale of assessment
45 Panama	70	19/07/2013	64,015	51,038	12,977		Outstanding amount including change of scale of assessment
46 Philippines	138	14/12/2012	379,413	379,413		(128)	Additional payment made after change of scale of assessment
47 Poland	73		2,268,735	2,268,735			Full payment made after change of Scale of Assessment
48 Portugal	74	18/02/2010	1,205,842	1,205,842		(38,227)	Overpayment due to change of scale of assessment
49 Republic of Korea	75	06/12/2012	913,567	913,567			Full partial one-time payment completed
50 Republic of Moldova	133			7,440			Full payment made after change of Scale of Assessment
51 Romania	76		556,760	556,760			Full payment made after change of Scale of Assessment
52 Samoa	78	19/05/2010	2,480	2,480			Additional payment made after change of scale of assessment
53 San Marino	79	19/05/2010	7,440	7,440			Additional payment made after change of scale of assessment
54 Serbia	81		98,580	48,051	50,529		Outstanding amount due to change of scale of assessment
55 Slovakia	83	04/10/2012	421,290	421,290			Additional payment made after change of scale of assessment
56 Slovenia	84		246,295	246,295			Full payment made after change of Scale of Assessment
57 South Africa	85	28/01/2010	916,360	916,360			Additional payment made after change of scale of assessment
58 Spain	86	08/11/2013	7,323,898	7,323,898		(458)	Full payment made after change of Scale of Assessment
59 Suriname	112		9,920	2,281	7,639		Outstanding amount due to change of scale of assessment
60 Sweden	87	07/12/2011	2,450,583	2,450,583		(85,748)	Overpayment due to change of scale of assessment
61 Switzerland	88	06/12/2012	2,774,014	2,774,014		(194,969)	Overpayment due to change of scale of assessment
62 Timor-Leste	91		4,960	2,226	2,734		Outstanding amount including change of scale of assessment
63 Trinidad and Tobago	92		108,345	108,345			Additional payment made after change of scale of assessment
64 Tunisia	135	29/04/2013	88,660		88,660		Outstanding amount including change of scale of assessment
65 United Kingdom	94		12,757,430	12,757,430			Full payment made after change of Scale of Assessment
Total			94,769,453	94,107,108	719,075	(1,840,374)	

Annex III

Expenditures and future projected budgets for Major Programme VII-1 (Project Director's Office) per 26 October 2015

<i>7110 and 7120 Project Director's Office (permanent premises)</i>	<i>Actual expenditure 2008</i>	<i>Actual expenditure 2009</i>	<i>Actual expenditure 2010</i>	<i>Actual expenditure 2011</i>	<i>Actual expenditure 2012</i>	<i>Actual expenditure 2013</i>	<i>Actual expenditure 2014</i>	<i>Approved budget 2015 (**)</i>	<i>Actual expenditure per 26.10. 2015</i>	<i>Actual Impl. Rate %</i>	<i>Actual expenditure 2008- 26.10. expenditure 2015</i>	<i>Anticipated 2015</i>	<i>Total 2008- 2015 (*) (**)</i>	<i>Proposed budget (estimated) 2016 (*) (**)</i>	<i>Total 2008 - 2016</i>
Professional staff	No breakdown available														
General Service staff															
<i>Subtotal staff</i>	<i>48.3</i>	<i>266.6</i>	<i>315.6</i>	<i>321.5</i>	<i>352.4</i>	<i>599.0</i>	<i>654.2</i>	<i>448.0</i>	<i>431.8</i>	<i>96.4%</i>	<i>2,989.4</i>	<i>448.0</i>	<i>3,005.6</i>	<i>211.8</i>	<i>3,217.4</i>
General temporary assistance		16.8	26.4	9.7	37.2	74.7	353.0	0.0	425.2		943.0	493.2	1,011.0	-	1,011.0
Consultants								0.0			0.0		-	-	-
<i>Subtotal other staff</i>		<i>16.8</i>	<i>26.4</i>	<i>9.7</i>	<i>37.2</i>	<i>74.7</i>	<i>353.0</i>	<i>0.0</i>	<i>425.2</i>		<i>943.0</i>	<i>493.2</i>	<i>1,011.0</i>	<i>-</i>	<i>1,011.0</i>
Travel	0.5	4.4	14.9	19.3	6.4	10.2	25.8	11.0	10.8	98%	92.3	11.0	92.5	2.8	95.3
Hospitality		5.7	8.6	2.8	4.2	1.5	0.4	2.5	0.0	0%	23.2	2.5	25.7	2.5	28.2
Contractual services	35.0	2.1	9.4	28.2	148.1	309.7	187.9	671.6	118.3	18%	838.8	176.1	896.6	232.0	1,128.6
Training				3.2	36.5	0.0	13.6	2.5	4.8	192%	58.1	4.8	58.1	-	58.1
General operating expenses		9.9	20.0	0.0	0.0	0.0	0.0	2.5	0.0	0%	29.9	2.5	32.4	2.5	34.9
Supplies and materials				1.1	0.0	0.0	0.2	1.0	0.4	40%	1.7	1.0	2.3	1.0	3.3
Furniture and equipment		11.9	0.5	0.6	1.8	3.3	0.0	1.5	0.0	0%	18.1	1.5	19.6	-	19.6
<i>Subtotal non-staff</i>	<i>35.5</i>	<i>34.0</i>	<i>53.4</i>	<i>55.2</i>	<i>197.1</i>	<i>324.7</i>	<i>228.0</i>	<i>692.6</i>	<i>134.3</i>	<i>19.4%</i>	<i>1062.2</i>	<i>199.4</i>	<i>1,127.3</i>	<i>240.8</i>	<i>1,368.1</i>
Total	83.8	317.4	395.4	386.4	586.7	998.4	1235.2	1140.6	991.3	87%	4,994.6	1140.6	5,143.8	452.6	5,596.4

(*) 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 IV

Total projected cost of the permanent premises project per 26 October 2015 (in thousands of euro) - Expenditures and future projected budgets 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>Approved budget 2015</i>	<i>Actual expenditure in 2015 per 26.10.2015</i>	<i>Actual expenditure 2008- 26.10.2015</i>	<i>Anticipated expenditure 2015</i>	<i>Proposed budget 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	82,888.7	55,557.2	44,212.9	186,255.3	55,557.2	6,400.4	204,000.0
Annual budget													
<i>Major Programme VII-I</i>	83.8	317.4	395.4	386.4	586.7	998.4	1235.2	1140.6	991.3	4,994.5	1,140.6	452.6	5,596.4
Programme 7110 - Project Director's Office	83.8	317.4	395.4	386.4	421.8	782.6	695.8	504.5	484.4	3,567.6	504.5	246.6	3,834.3
Programme 7120 - ICC Staff Resources and management support (**)	0.0	0.0	0.0	0.0	113.9	215.8	539.5	636.1	506.9	1,376.1	636.1	206.0	1,711.3
Programme 7130 - 2gv elements (non-integrated user equipment) (***)	0.0	0.0	0.0	0.0	50.9	0.0	0.0	0.0		50.8	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		2,021.2	0.0	0.0	2,021.2

(*) 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.

(****) Total project cost increase up to 204,000.00 k € is under delegated authority of Oversight Committee.

Annex V

Progress report for Oversight Committee: Construction Project and Transition Project: ICC NPP Summary financial total overview up to 26 October 2015

	Budget		SAP Budget execution				Provisions			Total estimated cost			
			(2)	(3)	(5=2+3+4)		(A)	(B1)	(B2)	(5+A+B1)	(5+A+B2)		
	Budget approved by ASP	Budget approved for spending by OC	Budget closing position	SAP paid to date	SAP PO to date	SAP total execution	Obligated not in SAP yet	Still to obligate best case	Still to obligate worst case	Total cost best case	Total cost worst case	Saldo best case	Saldo worst case
Construction cost								0	0				
Form of Agreement (excluding AV)	141,040,700	0	141,040,700	141,850,000	-809,300	141,040,700	0	-248,087	-248,087	140,792,613	140,792,613	248,087	248,087
Share part ICC NEC3 contract	0	0	0	0	0	0	0	-2,370,398	-2,100,541	-2,370,398	-2,100,541	2,370,398	2,100,541
AV	6,000,000	0	6,000,000	3,696,783	5,138,783	8,835,565	0	165,000	222,656	9,000,565	9,058,221	-3,000,565	-3,058,221
Construction others	719,000	0	719,000	1,416,951	16,221	1,433,171	0	-150,000	-150,000	1,283,171	1,283,171	-564,171	-564,171
Risk	12,046,231	0	12,046,231	7,286,631	12,195,927	19,482,558	0	325,329	1,051,546	19,807,887	20,534,104	-7,761,656	-8,487,873
Permits& Dues	2,549,526	0	2,549,526	2,553,703	2,774	2,556,476	0	0	0	2,556,476	2,556,476	-6,950	-6,950
Fees	20,492,188	0	20,492,188	19,925,803	188,015	20,113,818	0	0	0	20,113,818	20,113,818	378,370	378,370
Other Cost	1,500,000	0	1,500,000	1,500,000	-11,500	1,488,500	0	0	0	1,488,500	1,488,500	11,500	11,500
Additional budget		8,300,000	8,300,000	0	0	0	0	0	0	0	0	8,300,000	8,300,000
Subtotal construction	184,347,645	8,300,000	192,647,645	178,229,870	16,720,919	194,950,789	0	-2,278,157	-1,224,426	192,672,632	193,726,362	-24,987	-1,078,717
Transition													
Construction cost transition	1,067,355	-	1,067,355	3,206,203	-86,901	3,119,302	-	47,100	47,341	3,166,402	3,166,643	-2,099,047	-2,099,288
Fees transition	3,450,820	-	3,450,820	1,550,739	129,766	1,680,506	-	927,695	933,393	2,608,201	2,613,899	842,619	836,921
Equipment transition	6,834,180	-	6,834,180	3,268,497	993,900	4,262,398	-	796,390	796,390	5,058,788	5,058,788	1,775,392	1,775,392
Reserve	-	-	0	-	-	-	-	0	513,026	0	513,026	0	-513,026
Subtotal transition	11,352,355	-	11,352,355	8,025,439	1,036,766	9,062,205	-	1,771,185	2,290,150	10,833,390	11,352,355	518,965	-0
Consolidated	195,700,000	8,300,000	204,000,000	186,255,308	17,757,686	204,012,994	0	-506,972	1,065,723	203,506,022	205,078,717	493,978	-1,078,717
			-	-	-0	-	-	-	-	-	-	-0	-0

Annex VI

Scale of assessment: comparison of 2013-2015 and 2016-2018 scales

<i>States Parties</i>	<i>2013-2015 Base Scale</i>	<i>Provisional 2016-2018 Base Scale</i>
1 Afghanistan	0.0079	0.0100
2 Albania	0.0159	0.0136
3 Andorra	0.0127	0.0102
4 Antigua and Barbuda	0.0032	0.0034
5 Argentina	0.6865	1.5196
6 Australia	3.2961	3.9814
7 Austria	1.2682	1.2266
8 Bangladesh	0.0100	0.0100
9 Barbados	0.0127	0.0119
10 Belgium	1.5860	1.5077
11 Belize	0.0016	0.0017
12 Benin	0.0048	0.0051
13 Bolivia	0.0143	0.0204
14 Bosnia & Herzegovina	0.0270	0.0221
15 Botswana	0.0254	0.0239
16 Brazil	4.6628	6.5130
17 Bulgaria	0.0747	0.0767
18 Burkina Faso	0.0048	0.0068
19 Burundi	0.0016	0.0017
22 Cabo Verde	0.0016	0.0017
20 Cambodia	0.0064	0.0068
21 Canada	4.7422	4.9763
23 Central African Republic	0.0016	0.0017
24 Chad	0.0032	0.0085
25 Chile	0.5308	0.6797
26 Colombia	0.4116	0.5486
27 Comoros	0.0016	0.0017
28 Congo	0.0079	0.0102
29 Cook Islands	0.0016	0.0017
30 Costa Rica	0.0604	0.0801
31 Côte d'Ivoire	0.0175	0.0153
32 Croatia	0.2002	0.1687
33 Cyprus	0.0747	0.0733
34 Czech Republic	0.6134	0.5860
35 Democratic Republic of the Congo	0.0048	0.0100
36 Denmark	1.0727	0.9949
37 Djibouti	0.0016	0.0017
38 Dominica	0.0016	0.0017
39 Dominican Republic	0.0715	0.0784
40 Ecuador	0.0699	0.1141
41 Estonia	0.0636	0.0647
42 Fiji	0.0048	0.0051
43 Finland	0.8248	0.7769
44 France	8.8885	8.2779
45 Gabon	0.0318	0.0290
46 Gambia	0.0016	0.0017
47 Georgia	0.0111	0.0136
48 Germany	11.3487	10.8845
49 Ghana	0.0222	0.0273
50 Greece	1.0139	0.8024
51 Grenada	0.0016	0.0017
52 Guatemala	0.0429	0.0477
53 Guinea	0.0016	0.0034
54 Guyana	0.0016	0.0034
55 Honduras	0.0127	0.0136
56 Hungary	0.4227	0.2743
57 Iceland	0.0429	0.0392
58 Ireland	0.6643	0.5707
59 Italy	7.0689	6.3852
60 Japan	17.2129	16.4912

	<i>States Parties</i>	<i>2013-2015 Base Scale</i>	<i>Provisional 2016-2018 Base Scale</i>
61	Jordan	0.0350	0.0341
62	Kenya	0.0207	0.0307
63	Latvia	0.0747	0.0852
64	Lesotho	0.0016	0.0017
65	Liberia	0.0016	0.0017
66	Liechtenstein	0.0143	0.0119
67	Lithuania	0.1160	0.1227
68	Luxembourg	0.1287	0.1090
69	Madagascar	0.0048	0.0051
70	Malawi	0.0032	0.0034
71	Maldives	0.0016	0.0034
72	Mali	0.0064	0.0051
73	Malta	0.0254	0.0273
74	Marshall Islands	0.0016	0.0017
75	Mauritius	0.0207	0.0204
76	Mexico	2.9274	2.4447
77	Mongolia	0.0048	0.0085
78	Montenegro	0.0079	0.0068
79	Namibia	0.0159	0.0170
80	Nauru	0.0016	0.0017
81	Netherlands	2.6286	2.5248
82	New Zealand	0.4021	0.4566
83	Niger	0.0032	0.0034
84	Nigeria	0.1430	0.3561
85	Norway	1.3524	1.4464
86	Panama	0.0413	0.0579
87	Paraguay	0.0159	0.0239
88	Peru	0.1859	0.2317
89	Philippines	0.2447	0.2811
90	Poland	1.4637	1.4328
91	Portugal	0.7533	0.6678
92	Republic of Korea	3.1689	3.4737
93	Republic of Moldova	0.0048	0.0068
94	Romania	0.3592	0.3135
95	Saint Kitts and Nevis	0.0016	0.0017
96	Saint Lucia	0.0016	0.0017
97	Saint Vincent and the Grenadines	0.0016	0.0017
98	Samoa	0.0016	0.0017
99	San Marino	0.0048	0.0051
100	Senegal	0.0095	0.0085
101	Serbia	0.0636	0.0545
102	Seychelles	0.0016	0.0017
103	Sierra Leone	0.0016	0.0017
104	Slovakia	0.2718	0.2726
105	Slovenia	0.1589	0.1431
106	South Africa	0.5912	0.6201
107	Spain	4.7248	4.1620
108	State of Palestine	0.0064	0.0119
109	Suriname	0.0064	0.0102
110	Sweden	1.5257	1.6287
111	Switzerland	1.6639	1.9421
112	Tajikistan	0.0048	0.0068
113	The FYR of Macedonia	0.0127	0.0119
114	Timor-Leste	0.0032	0.0051
115	Trinidad and Tobago	0.0699	0.0579
116	Tunisia	0.0572	0.0477
117	Uganda	0.0095	0.0100
118	United Kingdom	8.2290	7.6033
119	United Republic of Tanzania	0.0100	0.0100
120	Uruguay	0.0826	0.1346
121	Vanuatu	0.0016	0.0017
122	Venezuela	0.9964	0.9728
123	Zambia	0.0095	0.0100
		100.0000	99.9998
	<i>Rounding</i>		<i>0.0002</i>
		100.0000	100.0000

Annex VII

Lessons learned on Total Cost of Ownership

[See appendix VII of the document CBF/25/9]

Annex VIII

Court views on the draft decision on total cost of ownership, dated 15 September 2015

1. The Court has carefully considered the "Comprehensive Recommendation" on the Total Cost of Ownership issued by the Chairman of the OC for consideration and decision by the OC. The Court is of the opinion that the comprehensive advice issued by the Working Group on Total Cost of Ownership (WGTCO) on 2 April 2015 and shared by the expert of the OC, represents the best solution for the Court's permanent premises, as to the maintenance and capital replacement strategy in order to preserve the full functionality and value of its premises in the long run.
2. The WGTCO, chaired by the Project Director and composed of representatives of the Court and the Oversight Committee, including the Oversight Committee's expert, met several times from April 2013 to March 2015 and was periodically attended by the external auditors. It discussed extensively the subject matter and decided on:
 - (a) *Organizational model*: maintenance and capital replacements outsourced to a main contractor (as opposed to in-house solution), with a lean Facility Management Unit in the Registry;
 - (b) *Funding Strategy*: financing of the maintenance programme through the regular budget of the Court and financing of the capital replacement programme through the establishment of a fund to be financed with flattened annual contributions would ensure smooth implementation. Alternative solutions, such as hybrid fund with lower contributions and credit facility were also considered viable;
 - (c) *Governance*: CBF and ASP; implementation audited by external auditors; and
 - (d) *Contributions to the Permanent Premises construction project's costs by new States*: forward looking through the payment of the share into the fund to reduce the TCO cost for the existing States. However, this requires that the value of the building be preserved at the same level through the implementation of an appropriate programme of maintenance and capital replacement as per the WGTCO advice. However, the Court believes that introducing a mechanism for future States Parties to proportionally contribute to the permanent premises construction project's costs could be a negative incentive for non-States Parties to join the ICC in the future, potentially affecting universality.
3. Based on the WGTCO conclusions and advice, the Court is concerned that the proposal made by the Chairman of the OC might entail serious risks in the long run for a sustainable maintenance and capital replacement programme for the Court's premises. The Court would like the above to be put in the records.

Annex IX

Conclusions of the Working Group on Total Cost of Ownership

[See Annex VI of document CBF/24/20]

Annex X

Comparison costs Interim and Permanent Premises

Interim Premises			Permanent Premises				
	2014	2015		2016	2017	2018	2019
MPIII Registry			MPIII Registry				
GSS ¹			GSS				
			Increase in FMU Staff Costs from 2014 ⁴	305.2	342.1	287.9	324.8
			GTA	36.1	37.0		
Overtime	18.3	19.0	Overtime	55.0	56.4	57.8	59.2
Contractual services	0.0	0.0	Contractual services	311.9	321.3	330.9	340.8
General operating expenses ⁵	2,035.9	1,394.4	General operating expenses ⁵	2,998.0	3,087.9	3,180.6	3,276.0
Supplies and materials	7.3	21.8	Supplies and materials	63.3	65.2	67.2	69.2
Furniture and equipment	28.8	0.0	Furniture and equipment	52.1	53.7	55.3	56.9
Total GSS	2,090.3	1,435.2		3,821.6	3,963.5	3,979.6	4,126.9
			Security Staff	981.2	1,005.7	1,030.9	1,056.6
			Receptionists	130.0	133.3	136.6	140.0
			IMIS (IT) Help Desk	72.3	74.1	76.0	77.9
Total IP Costs Registry	2,090.3	1,435.2	Total PP Costs Registry	5,005.1	5,176.6	5,223.0	5,401.4
MPV Premises			MPV Premises				
Rent and Maintenance IP	6,120.0	6,000.0	Maintenance PP ²	1,071.0	1,454.9	1,476.7	1,498.8
			TCO (Capital Replacement) ³		4,300.0	4,300.0	4,300.0
Total IP Related Costs	8,210.3	7,435.2	Total PP Related Costs	6,076.1	10,931.5	10,999.7	11,200.2
Less Host State Contribution	3,000.0	3,000.0					
ICC Costs	5,210.3	4,435.2	ICC Costs	6,076.1	10,931.5	10,999.7	11,200.2

¹GSS Costs in IP reduced by 800k p.a. since 2010 due to pending move to PP

²Does not include 1979.0 for IP rent in 2016, 800.0 of which will be paid by Host State

³Based on the recommendation of the working group on Total Cost of Ownership (OC). The actual amount requested will be subject to the 14th ASP Resoluti

⁴WG on TCO recommended 18 FMU staff in 2016, 19 in 2017 and 17 from 2017 on. ICC Chose 17 in 2016 and 2017, and 15 from 2018 on.

Annex XI

Decision of the Committee at its Tenth Meeting (26 August 2015)

1 September 2015, 18:00b

OVERSIGHT COMMITTEE

Tenth meeting

26 August 2015

DECISION

Pending transition contracts

The Oversight Committee,

Having reviewed the pending construction and transition contracts at its meetings held on 2 July, 10 July, 13, 17, 25 and 26 August 2015,

Considering the information submitted by the Project Director's Office with the "List of contracts to be concluded", and the explanations and additional clarifications received at its meetings,

Mindful of the need to strengthen the financial security of the project,

Decides as follows

A. Financial security and objectives

1. All approved contracts shall be procured, entered and implemented so as to achieve the maximum cost reduction on the nominal contract value,
2. Any savings realized in the authorized contracts shall be credited to the transition project reserve,
3. The transition project reserve shall remain under the exclusive authority of the Committee, and shall not be committed against any expenditure without the authorization of the Committee.

B. Contract authorization

1. "Local secure data network for Victims and Witness Section" (€80,000)
 - (i) *Takes note* of the needs of the Court in this area,
 - (ii) *Considers* that the requirements related to improved security standards do not appear to necessarily relate to the transition project but rather to the annual budget cycle,
 - (iii) *Does not approve* that the contract be funded through the permanent premises budget, without prejudice to the competence of the Court to fund the requirements within its regular annual budget.
2. "Furniture that the ICC does not have" etc. (€60,000)

Further approves that the contract approved on 13 August, as far as the chairs for the Conference Centre are concerned, is implemented with the addition of more comfortable seats, at an additional total cost of €4,500, to be funded through the savings realized in the procurement process of other transition contracts;

3. "Warehouse provisions, first aid equipment, x-ray scanners" (€65,300)

Approves

4. “Additional furniture if needed” (€242,750)

Postpones consideration of the approval until further justification and the breakdown of costs for the different requirements is provided to the full amount of the contract value;

5. “Move operation to the new permanent premises” (€353,995)

Considering the savings realized at the procurement stage,

Approves the contract up to the value of €300,000;

6. “Move ICT equipment” (€196,491)

Approves;

7. “Preparation move” (€100,000)

Approves;

8. “Connection cords” etc. (€150,000)

Approves;

9. “Development and implementation of a visitors management system” (€100,000)

Postpones consideration of the approval until the breakdown of costs for the different requirements is provided.

* * *

Annex XII

Decision of the Committee at its Thirteenth Meeting (28 September 2015)

29 September 2015

OVERSIGHT COMMITTEE

Thirteenth meeting

28 September 2015

DECISION

Changes to floor plans

The Oversight Committee,

Considering that at its twelfth meeting, on 18 September 2015, it was informed by the Project Director that the Court had requested changes to the floor plans in three areas of the new premises, and that such changes were to be implemented after the construction project completion, with a decision to be taken by 2 October 2015;

Also considering the documentation submitted by the Project Director's Office on 27 September 2015,¹ and the explanations and additional clarifications received at its meetings, including that the changes proposed are part of a longer list of users' changes;

Further considering that the cost implications of such late floor plan changes amount to a total of €240.000, including:

- €1.000 for the Vice President Office (relocation to the same floor of the other members of the Presidency),
- €99.000 for the OTP – Information & Evidence Unit (conversion from closed offices to open plan, and isolation from the rest of OTP), and
- €30.000 for the Defence Counsel (conversion from open plan to closed offices);

Mindful that the Assembly of States Parties:

- (i) Following the consistent recommendations of the External Auditors and of the Committee on Budget and Finance, had requested the Committee to “ensure that any changes during the construction stage and until completion of the project be only approved on a cost neutral basis”;²
- (ii) Invited the Committee “to continue implementing a strict control on expenditures [...] on the budget [...] approved, including by authorizing in advance any obligations to be entered by the project”;³
- (iii) Requested the Committee “to report on a regular basis to the Bureau on steps to be taken with regard to the effectivity and break down of costs, including prioritizing the expenses”;⁴
- (iv) Requested the Bureau “to take the necessary steps in light of the mandate in Assembly resolution ICC-ASP/13/Res. 2”,⁵ based on an “independent and detailed review of the project accounts and with emphasis on the cost overruns”;⁶

Noting the current financial status of the unified project,⁷ whereby:

¹ “Floor plan adjustments”, dated 27/09/2015; “Cost estimate adjustments: summary”, dated 23/09/2015.

² ICC-ASP/12/Res.2, paragraph 9 [identical language in previous years' resolutions].

³ ICC-ASP/13/Res. 6, paragraph 12.

⁴ *Ibidem*, paragraph 7

⁵ *Ibid.*, paragraph 13.

⁶ *Ibid.*, paragraph 10.

⁷ PDO, *Progress report for the Oversight Committee: up to 31 August 2015*.

- (a) The construction project's cost projections highlight a continuing worsening trend, with an expected variance between a positive financial result of €198.458 (best case) and a negative €1.011.730 (worst case);
- (b) The transition project's cost have a variance between a positive figure of €585.526 (best case, resulting from the existing reserve) and a neutral saldo of €0.0 (worst case);
- (c) Consequently, the aggregated result of the unified project would vary between + €783.984 and -€1.011.730, above the expected aggregated expenditures of €204 million;

Also noting that:

1. Based on the project's records, cost realization tends to materialize scenarios that lean towards the worst, rather than the best case;
2. While the construction project is critically leaning towards a negative result, the reserve available in the transition project is of a more limited amount;
3. The construction and the transition projects are unified, so that the financial outcome will be the result of the aggregated cost performance;
4. Under the critical financial situation of the project - which represents a risk for the realization of the objective of the Assembly, to achieve the delivery of the unified project within the expected costs of €204 million – utilizing the reserve available in the transition area in order to fund additional requirements (changes) in the construction project would aggravate the risk of realization of the worst case scenario of a significant cost overrun;
5. The floor plan changes are proposed for realization after completion of the construction project, so that they do not pertain to the latter but to a different phase, that coincides with the transition but pertains to elements of the construction that have already been approved, instructed and realized according to the project;
6. The requirements of the different users that prompt the floor plans changes are reportedly related to the functionality of the premises for the Court, but also with no impact on the ability of the Court to move to its new premises within the December 2015 deadlines;
7. The functionality requirements had been reportedly discussed with all users before the floor plans were approved. While the Committee has not previously taken part in the consultations in that regard between the PDO and the users, it understands that the requirements should strictly reflect objective needs of the users, as depositaries of a function, and not in their personal capacity. In that regard, changes in the PDO's interlocutors subsequent to the agreements on the floor plans, should not affect decisions taken at previous stages;
8. Irrespective of the ability of the Committee to authorize that the resources of the project are committed to the proposed changes, it would remain for the Court to assess whether such changes reflect priorities that it wants to implement within any flexibility of the resources budgeted for the current financial year;

Decides as follows

Does not approve the proposed floor plan changes, in the amount of €240.000, without prejudice for the Court to prioritize needs arising upon project completion within the annual budget envelope.

Annex XIII

Decision of the Committee at its resumed Fourteenth Meeting (23 October 2015)

29 October 2015 17:45

OVERSIGHT COMMITTEE

Fourteenth meeting - *resumed*

23 October 2015

DECISION/Rev.1

Pending transition contracts

Additional furniture

The Oversight Committee,

Having received on 21 October from the Project Director's Office a request for entering into obligations up to €89,559 against "additional furniture" for nine categories of items,

Considering that the approval of this procurement action, up to a value of €242,750 had been postponed since the decision taken by the Committee on 26 August 2015, also upon request of the Project Director's Office, and until further justification and the breakdown of costs was provided to the full amount of the contract value,

Also considering the justification received in writing and orally at the meetings held on 21 and 23 October 2015,

Stressing that all the requirements are reportedly related to the functionality of the new premises, but some do not have any impact on the ability of the Court to move into its new premises, and also appear to reflect an increased quality level,

Mindful of the need to strengthen the financial security of the project,

Decides as follows

1. *Takes note* of the needs of the Court in this area,
2. *Approves* the procurement of the following items through the permanent premises budget, up to a total quoted value of €40,559:
 - a) "Adjust large conference table from conference room 1506 instead of procuring a new one" = €12,451;
 - b) "Systems furniture (chairs, desks, coffee tables, coat racks) = €28,108
3. *Does not approve* that all the other items listed below, up to a total estimated value of €49,000 be funded through the permanent premises budget, without prejudice to the competence of the Court to fund the requirements within its regular annual budget and according to its priorities:
 - a) Lecterns courtrooms = €10,000
 - b) Seat cushions in holding cells = €8,000
 - c) Cabinets for binders in court rooms = €10,000
 - d) Witness Waiting Rooms Fitting out (kitchenettes) = €18,000
 - e) Lamellas Security Control Room = €500
 - f) Storage capacity between desks in Security Control Room = €2,000
 - g) Room divider in restaurant for judges= €500