

## Resolution ICC-ASP/14/Res.5

Adopted at the 12th plenary meeting, on 26 November 2015, by consensus

### ICC-ASP/14/Res.5

#### Resolution on permanent premises

*The Assembly of States Parties,*

*Recalling* its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1,<sup>1</sup> ICC-ASP/7/Res.1,<sup>2</sup> ICC-ASP/8/Res.5,<sup>3</sup> ICC-ASP/8/Res.8,<sup>4</sup> ICC-ASP/9/Res.1,<sup>5</sup> ICC-ASP/10/Res.6,<sup>6</sup> ICC-ASP/11/Res.3,<sup>7</sup> ICC-ASP/12/Res.2,<sup>8</sup> ICC-ASP/13/Res.2,<sup>9</sup> and ICC-ASP/13/Res.6,<sup>10</sup> and *reiterating* the importance of the permanent premises to the future of the Court,

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

*Noting* the recommendations of the External Auditor, as well as the reports of the Committee on Budget and Finance on the work of its twenty-fourth and twenty-fifth sessions, and the recommendations contained therein,

*Stressing* its firm intention that the unified construction and transition projects for the permanent premises should be delivered within the €206 million budget, of which €1,993,524 shall not be disbursed if the sharing mechanism of the contract with the General Contractor produces such expected results, as per resolution ICC-ASP/13/Res.6,

*Also stressing* the role of the Oversight Committee in implementing, under its delegated authority, any actions that might be needed to ensure that the project proceeds safely within budget and expenditure level, as well as that the ownership costs of the permanent premises be as low as possible,

*Noting* the existing pressure on the strategic reserve of the project, as a result of reductions on other reserves made before 2013,

*Also noting* that financial security needs to be built into the approved budget envelope to prevent a potential overrun on the expenditure level, which could negatively affect the financial objectives of the Assembly,

*Recalling* that the Oversight Committee and the Registrar have decided to cooperate in a spirit of mutual trust and collaboration to ensure the unified project's success,

*Noting* that the permanent premises project has been completed on 2 November 2015, and *recalling* its objective that the Court be able to progressively move into and take full occupation of the new premises by December 2015,

*Also recalling* that the permanent premises shall be delivered within the approved budget at a good quality standard, while avoiding elements that might not be essential to the proper performance of the core functions of the Court or that would otherwise negatively affect the total cost of ownership,

*Noting* the desire of States Parties that the permanent premises adequately reflect the role of the Assembly in the governance of the Rome Statute system and, consequently, that States Parties' interests are fully taken into account in the future governance and management of the premises,

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

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

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

<sup>4</sup> *Official Records ... Eighth session (resumption) ... 2010* (ICC-ASP/8/20/Add.1), part II.

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

<sup>6</sup> *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part II.

<sup>7</sup> *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. I, part II.

<sup>8</sup> *Official records ... Twelfth session ... 2013* (ICC-ASP/12/20), vol. I, part II.

<sup>9</sup> *Official records ... Thirteenth session ... 2014* (ICC-ASP/13/20), vol. I, part II.

<sup>10</sup> *Official records ... Thirteenth resumed session ... 2015* (ICC-ASP/13/20), vol. I, part II.

## I. Governance and Management of the Project

1. *Welcomes* the report of the Oversight Committee and *expresses* its appreciation to the Oversight Committee, the Project Director, the Court and the host State for the progress made on the permanent premises unified project since the thirteenth session of the Assembly; *encourages* members and observers to continue working efficiently together in the Committee with maximum mutual transparency, as much as possible in open meetings, to achieve the successful completion of the unified project;

### A. Construction Project

2. *Approves* the revised cash-flow scheme contained in Annex I;
3. *Welcomes*:
  - (a) That the project has been completed, and that the Court has taken occupation of the premises as from 2 November 2015, with costs currently within the overall financial envelope of a maximum of €206 million, including both the construction budget of €194.7 million and the transition budget of €1.3 million;
  - (b) That the period between November and December 2015 would still be fully available for the Court to complete its move from the interim to the permanent premises, and that the actual move of the Court will take place in December 2015;
  - (c) The ongoing implementation of the cost-review strategy put in place by the Oversight Committee, including following the mandate of the Assembly at its thirteenth resumed session, so as to ensure that the project continues to allow for good quality premises while avoiding elements that might not meet the necessary standard of coherence with the core functions of the Court, or that would otherwise negatively affect the total cost of ownership;
4. *Takes note* of the ongoing financial situation of the project, as its final costs are only expected to be known by the end of March 2016, as they depend on pending contractual mechanisms with the General Contractor;
5. *Emphasizes* the importance of strict control on changes of requirements until transition is completed, and of the use of the project reserve only as a means of last resort, in order to ensure that the project is delivered to cost, quality and on time;

### B. Transition Project

6. *Requests* the Oversight Committee and the Court to ensure through the Project Director that all preparatory measures are adopted for the Court to be ready to take occupation of the permanent premises by no later than December 2015 in order to avoid any additional expenditure for States Parties, and to report thereon in detail to the Bureau and to the Committee on Budget and Finance;
7. *Also requests* the Oversight Committee and the Court to ensure through the Project Director that a meaningful review process of the transition elements is continued effectively and implemented taking into account any new options for achieving savings, including but not limited to the review of the user requirements, consideration of the Court's assets, and the conduct of procurement actions;
8. *Recalls* its objective that costs related to the transition project remain as low as possible in order to stay within, and, if possible, below the approved €1.3 million budget;
9. *Also recalls* its decision 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, and that an amount of €4.4 million has been funded in 2014 with the surplus pertaining to 2012, which brings the current outstanding amount to be funded at €1.3 million, expectedly with the 2014 surplus;

## C. Unified Project

10. *Recalls* that the total estimated costs (level of expected expenditures) amount to €204 million for the unified project, and an estimated figure of €7,617,600 from the regular annual budgets of the Court and for the management of the project;<sup>11</sup>

11. *Also recalls* that the unified project budget is the result of subsequent decisions taken in 2013 (budget unification, at €195.7 million), in 2014 (delegated authority to the Committee, to increase budget up to €200 million), and in 2015 (increase up to €206 million),

12. *Noting* that, while to date costs remain within the unified project budget set by the Assembly at €206 million and the expected expenditure level of €204 million, current pressures on final cost estimates exist, and that measures are needed to give financial security to the project in case of a cost overrun,

13. *Requests* the Oversight Committee and the Project Director to ensure that every effort is made to mitigate risks, seek opportunities for additional savings, and deliver the project within the expected expenditure level of €204 million, and its current budget envelope;

14. *Welcoming* that the Oversight Committee has implemented a close scrutiny of all pending contracts, and a prudent policy of maintaining existing savings in the transition project as a reserve of last resort, which would contribute to mitigating the risk of a cost overrun in the unified project, and, *also welcoming* the work of the Project Director and of the Court to achieve the best results and cost effectiveness in the procurement process;

15. *Endorses* the decision of the Oversight Committee<sup>12</sup> that:

- (a) All approved contracts shall be procured, entered and implemented so as to achieve the maximum cost reduction on the nominal contract value;
- (b) Any savings realized in the authorized contracts shall be credited to the transition project reserve; and
- (c) 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;

16. *Reiterates* its request that the Oversight Committee continue implementing a strict control on expenditures by means of the appropriate procedure for the management and control of the project budget, including by authorizing in advance any obligations to be entered by the project and, in that regard;

17. *Also request* the Oversight Committee to ensure that any savings achieved at this stage are kept in reserve in order to mitigate the risk of the potential worst case cost overrun above the expected expenditure level of €204 million;

18. *Further requests* the Project Director's Office to continue reviewing the requirements of the unified project corresponding to obligations not yet entered into and, in particular, by revising items so as to avoid that they reflect any state-of-the-art concept of quality, with the view of achieving a cost reduction in those areas of the project that do not affect the occupation by the Court by December 2015;

## II. Capacity of the premises

19. *Acknowledging* that the capacity of the premises under the finalized construction allows for 1.382 workstations, with a theoretical capacity up to 1.519 workstations, should all individual offices be converted into shared offices, and meeting room space reduced drastically to accommodate extra office space,

---

<sup>11</sup> *Idem*, para. 22.

<sup>12</sup> Oversight Committee, *Decision on pending contracts*, dated 26 August 2015.

20. *Mindful* that the permanent premises will have to accommodate the Court in the long-term, and that an expansion of the permanent premises is not reasonably foreseeable in the next future,

21. *Requests* the Court to consider the permanent premises as a fixed factor of its growth strategies and, in that regard, to ensure that any request for approval of future increases in its staff level is also reasoned against the capacity of the premises and the specific solutions found to accommodate human resources,

22. *Also requests* the Court to provide concrete scenarios of the effects that its growth strategies, in the short to long term, would have on the capacity of the premises.

### III. Financing of the project

#### A. Funding needs

23. *Noting* that the total funding needs of the unified project currently amount to €9.6 million, as a result of the decisions taken by the Assembly in 2013 (€1.3 million), in 2014 (€4.3 million), and in 2015 (€4.0 million);

24. *Mindful* that the 2015 approved increase of expenditures shall be funded with resort to the reserves in the Employee Benefit Liabilities and in the Working Capital Fund;<sup>13</sup>

#### B. Final cost, audit and deadlines

25. *Noting* that, while the project has been completed by 2 November 2015, its final cost is only expected to be known once the final accounts with the general contractor are closed, which depends on: (i) The exact cost of the compensation events (changes), (ii) Other costs incurred until completion, and (iii) Outcome of the negotiations between Courtys and its sub-contractors;

26. *Also noting* that all such elements will affect the sharing mechanism and, therefore, the financial result of the project;

27. *Acknowledging* that the final cost can, therefore, only be considered to be achieved at a stage where no further changes in the accounts could take place, which is expected to materialize by the end of March 2016;

28. *Recognizing* that the repayment of the host State Loan is linked to a recalculation to be conducted upon both the completion of the project and the expiration of the rent of the interim premises, on 30 June 2016;

29. *Also recognizing* that, as a consequence, the recalculation of States Parties contributions can only be achieved upon availability of the audited project accounts;

30. *Mindful* that States Parties who have opted for one-time payments should be afforded the opportunity to adapt their payments to the final audited costs, in order to avoid an unintended access to the host State loan;

#### C. One-time payments

31. *Recalling* that States Parties had been requested to inform the Registrar of their final decision to select the option of a one-time payment of their assessed share in the project by 15 October 2009, and that this deadline was first extended to 15 October 2012,<sup>14</sup> and further extended to 31 December 2014,<sup>15</sup>

32. *Welcoming* the fact that since the thirteenth session of the Assembly, 6 additional States Parties have committed to making a one-time payment, for a total of additional €25 million, bringing the total number of States Parties having so committed to 65, as

<sup>13</sup> As decided by resolution ICC-ASP/13/Res. 6, paragraph 3.

<sup>14</sup> Resolution ICC-ASP/8/Res.8.

<sup>15</sup> Resolution ICC-ASP/11/Res.3. para. 14.

at 31 December 2014, in a total amount of €4,769,453 million, of which €4,107,108 million have already been received by the payment deadline of 15 June 2015,

33. *Recalling* the agreement on the host State loan (“Agreement”), and the resolutions adopted by the Assembly of States Parties on the matter;

34. *Acknowledging* that a financial gap has arisen between the reduction of the loan under the Agreement and the discount applied to States Parties making one-time payments, based on the resolutions of the Assembly of States Parties, and *also acknowledging* that such financial gap is currently estimated up to €3.5 million;

35. *Welcomes* with appreciation the offer of the host State to bridge the financial gap up to €3.5 million, as a political solution, with an additional contribution;

36. *Noting* that the conditions of the host State loan provide that payment of interest begins as of the time of the first utilization of the loan,<sup>16</sup> and that repayment of capital and interest will commence after expiration of the existing or future leases of the interim premises,<sup>17</sup>

37. *Also noting* that the necessary liquidity for the payment of interest and capital for the whole of the repayment period needs to be ensured, and that States Parties failing to make their contributions in a timely manner will be liable for any costs incurred to meet the reimbursement obligation of the loan, and that an appropriate financial solution has to be established to address this risk,

## D. Decisions

### 1. Funding

38. *Reiterates* that the 2013 outstanding amount of €1.3 million shall be funded through appropriation of the 2014 surplus;<sup>18</sup>

39. *Decides* that the 2014 outstanding amount of €1.3 million shall be funded through appropriation of the surplus from the 2014 and following financial periods;

40. *Reiterates* that that the 2015 approved increase of expenditures shall be funded with resort to the reserves in the Employee Benefit Liabilities and in the Working Capital Fund;<sup>19</sup>

41. *Approves* that cash advances up to the €5.6 million for the 2013 and 2014 above outstanding amounts may be made to the project budget from the reserves of the Court in order to meet any cash needs prior to the availability of the surplus pertaining to the 2014 and following financial periods, for the purpose of funding the 2013 and 2014 decisions referred above, as a temporary and prudent measure of last resort, and with an agreed schedule for restitution.<sup>20</sup>

### 2. Audit

42. *Decides* that the project audit for 2015 should be conducted so as to include in its scope the project accounts up to such a time as the costs have become final, which is expected by the end of March 2016;

### 3. Contributions

43. *Decides* that

- (a) The recalculation of States Parties contributions against the audited costs, the full amount of the host State reduction of the loan, and the further contribution of the host State against the financial gap referred to in paragraphs 24 and 35 above, shall

<sup>16</sup> Resolution ICC-ASP/7/Res.1, Annex II, (e).

<sup>17</sup> *Ibid.*, (f).

<sup>18</sup> As decided by resolution ICC-ASP/12/Res.2, paragraph 16.

<sup>19</sup> As decided by resolution ICC-ASP/13/Res. 6, paragraph 3.

<sup>20</sup> *Ibidem*, paragraph 17.

- be conducted as of 30 June 2016, for the purpose of a final adjustment of the one-time payments and in order to ensure that all States Parties receive a fair and equal treatment,
- (b) The final assessment of contributions shall be made well before 30 June 2016,
  - (c) The full amount of the reduction of the loan, for the purpose of reimbursement of the loan, shall be calculated, according to the stipulations of the Agreement,
  - (d) The Court shall send contribution letters to States Parties as soon as recalculations are completed;
  - (e) The deadline for States Parties having elected by 31 December 2014 the option of a full or partial one-time payment of their assessed share in the project, to execute the pledged payments shall be extended until no later than 29 June 2016,
  - (f) States Parties having elected by 31 December 2014 the option of a full or partial one-time payment of their assessed share in the project should consult with the Project Director so as to determine the scheduling thereof, taking into account that said one-time payments<sup>21</sup> are to be received in full by no later than 29 June 2016 or on any earlier date,
  - (g) States Parties having opted for a one-time payment and not fulfilling this option, entirely or partly, within the final deadline of 29 June 2016 will automatically forfeit the opportunity of making a one-time payment for any unpaid amount;
  - (h) Outstanding contributions of States Parties having opted for the repayment of the loan or having accessed the loan as a result of not matching the one-time payment final deadline of 29 June 2016, shall be treated as arrears,
  - (i) The Bureau will remain seized with any matter concerning the implementation of the one-time payments decisions,

#### IV. Scale of assessment

44. *Recalling* that at its thirteenth session the Assembly had taken note<sup>22</sup> of the recommendations 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;<sup>23</sup>

45. *Considering* that, based on the Loan Agreement entered with the host State, the Assembly had approved since the very beginning of the project<sup>24</sup> that contributions be fixed based on the scale applicable once the final cost of the project and the amount of the host State subsidy are known (in 2016),<sup>25</sup> by deducting the subsidy from the capital;

<sup>21</sup> See resolution ICC-ASP/11/Res.3, Annex II, Explanatory note on one-time payments, that clarifies the principles for to one-time payments in connexion with the criteria applicable to the agreement on the loan, including as regards those States Parties that would select the one-time payment option, or make their payments, after the host State loan has been accessed and payment of interest has commenced.

<sup>22</sup> ICC-ASP/13/Res. 2, paragraph 20.

<sup>23</sup> ICC-ASP/12/15, para. 164.

<sup>24</sup> 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"; para. 7 : "The adjustment [...]calculated at the end of the project [...] will [...] Take into account the scale of assessments to the Court's regular budget applicable at the time the final cost envelope of the project is determined".

<sup>25</sup> 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

46. *Also considering*, however, that the Explanatory note to the ICC-ASP/11/Res.3 of 2012 indicated that the scale of assessment will be the one applicable at the completion of the project (December 2015), without further changes;<sup>26</sup>

47. *Decides* that the liquidation of States Parties' contributions for the permanent premises shall be based on the scale of assessment applicable for 2013-2015.

## V. Financial reporting

48. *Reiterates* its requests to the Project Director to submit, through the Oversight Committee, and for consideration by the Assembly at its fifteenth session, a detailed and separate report on expenditures for the construction and transition activities,<sup>27</sup> together with the financial statements for the project;

## VI. Audit strategy

49. *Welcomes* that the External Auditor of the Court (*Cour des comptes*) has adopted a comprehensive approach to auditing the accounts and performances of the Court, which includes the full scope of the permanent premises project,<sup>28</sup> and *takes note* of the recommendations contained in the Financial statements for the period 1 January to 31 December 2014;<sup>29</sup>

## VII. Ownership of the Permanent Premises

### A. Ownership interests

50. *Recalling* its request that the Oversight Committee and the Court ensure that the interests of States Parties are addressed in matters related to the access to the premises, and that the Committee submits at the fourteenth session of the Assembly a proposal for States Parties representation of the ownership interests of the Assembly in the permanent premises;

51. *Welcomes* the proposal of the Oversight Committee that matters related to the enhanced access of States Parties to the premises (such as, access routes, parking, security screening, badges) and the use thereof (such as, rooms for meetings or to support delegations, and convertible courtroom) at the current stage be addressed through consultations between the appropriate organs of the Assembly and the Court;

52. *Takes note* that in future the most appropriate entry-point for these and any other States' related matters may be identified by the Assembly, also taking into account the mandate of the new governance structure.

### B. New States Parties contributions

53. *Mindful* that the Court is provided with permanent premises whose costs are equally contributed by all States Parties, and that the principle of equal sovereignty of States requires that such situation remains unaltered in future, so as to avoid that future States Parties benefit from an asset to which they might have not contributed,

54. *Acknowledging* that the decision to accede to the Rome Statute would not be driven by the cost future States Parties might have to share with current ones to take on their membership responsibilities,

---

entire Capital, then the Loan is to be reduced with a subsidy amount which is equal to : (Capital -/- the Loan) x 17,5%".

<sup>26</sup>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.

<sup>27</sup> ICC-ASP/12/15, para. 148.

<sup>28</sup> *Official Records ... Eleventh session ... 2012* (ICC-ASP/11/20), vol. II, part B.2, para. 82.

<sup>29</sup> ICC-ASP/13/12.

55. *Decides* that new States Parties, at the time of their accession to the Rome Statute, shall be assessed contributions against the total cost of the permanent premises as detailed in Annex IV.

### C. Governance structure

56. *Stressing* the need to ensure sufficient and continuous oversight by the States Parties on the permanent premises in which they have invested significant financial resources,

57. *Considering* that a decision by the Assembly is required at this 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 relationship between States Parties and the Court, as well as to continue preparations for the asset value to rely on reasonable financing expectations,

58. *Invites* the Bureau to continue discussions on the establishment of a new governance structure for the permanent premises, and to report thereon to the fifteenth session of the Assembly,

59. *Agrees* that if no decision is taken on the establishment of a new governance structure by the end of the fifteenth session of the Assembly that the mandate of the Oversight Committee shall be extended until such time such decision is taken.

## VIII. Total Cost of Ownership

60. *Stressing* that the ownership responsibility of States Parties for the permanent premises include the preservation of the asset value at an appropriate functional level throughout its lifetime, and that capital replacement actions need to be planned and funded within a structured framework, in a political and financial sustainable context;

61. *Considering* that the Oversight Committee has reviewed the conclusions of its working group on Total Cost of Ownership, headed by the Project Director, which recommended a multiannual approach, which appears most advantageous from a technical perspective, whereby long-term maintenance and capital replacement would be organized through a Main Contractor, resources of approximately €300 million would be provided in fifty years through flattened annual contributions to a fund, and governance ensured by the existing mechanisms (Assembly, Committee on Budget and Finance, External Auditor);

62. *Noting* that the Oversight Committee has finalized its work on the Total Cost of Ownership and, upon advice of the Committee on Budget and Finance at its twenty-fifth session, has reported in details to the Assembly,

63. *Considering* the recommendations of the Oversight Committee on the governance, organization, costs, and funding of the capital replacement for the permanent premises;

- (a) The governance of the permanent premises should be ensured through a structure that enables States Parties to retain a firm control over strategic decisions that will affect the long-term cost, functionality, and value of the premises;
- (b) 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, so as to further scale down its resources and achieve increasing efficiencies and objective savings by making full use of its resources;
- (c) 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, only;
- (d) 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) 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.

64. *Recalling* its authorization for the Court to extend the maintenance contracts provided by the General Contractor during the first year after the delivery of the permanent premises, to a period ending on 31 December 2017, in order to allow the Court sufficient time to prepare its future long term maintenance strategy and contracts;<sup>30</sup>

65. *Acknowledging* that the following costs will be included in the annual budgets of the Court:

- (a) Operational costs, including utilities, cleaning and staff costs,
- (b) Services needed for running the premises (e.g., occasional conversion of Courtroom 1 for Assembly of States Parties purposes),
- (c) Other Facility Management Costs;

66. *Welcomes* the approach to the Total Cost of Ownership contained in the report of the Oversight Committee, and *approves* the decision in Annex II to this resolution;

67. *Decides* that:

- (a) Governance. The governance of the permanent premises shall be ensured through a future governance structure, with the aim of retaining 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<sup>31</sup> and the capital replacements shall be conducted in the start-up phase and for a first period of 10 years, starting in 2018, on the bases of a Main Contractor model. Over time the Court will have to take strategic responsibilities, and be able to conduct in-house part of the required activities, including maintenance management and strategy, so as to achieve increasing efficiency and objective savings;
- (c) Cost estimates, shall be revised through a *meaningful cost review* conducted by the Premises Committee in the period 2017-2019 as follows:
  - (i) Application of practices of the international public sector. Practice of the private sector shall not be considered,
  - (ii) Experience developed at the seat of major International Organization, primarily in Geneva and Vienna, shall be driving the review,
  - (iii) Lifetime of assets and level of maintenance (condition scores) shall strictly follow the experience of the international public sector.
  - (iv) No costs for capital replacements shall be factored in for the first ten years, until 2026,
  - (v) The revised costs shall be projected in the medium-term plans;
- (d) Funding. Extra-budgetary resources, including annual surplus and contributions of new States Parties, shall be used to finance capital replacement costs. Surplus deriving from overpayment of contributions in the permanent premises shall offset future contributions due by the same States Parties against the long-term capital replacement costs. An analysis of a sustainable use of budgeted resources (assessed contributions) or other financial instruments (including loans) to provide sufficient financial security to the capital replacement needs shall be conducted, together with

---

<sup>30</sup> ICC-ASP/13/Res.2, paragraph 14.

<sup>31</sup> Preventive and corrective maintenance will be provided in 2016 (funded at €1.1 million – para. 390 of the annual budget proposal) by the project's General Contractor, Courtys, through the approved extension of the guaranteed period.

the cost-review, in the period 2017-2019. The establishment of a Fund with the scope and purpose proposed by the Working Group is not a politically viable option;

- (e) Urgent repairs. Upon request of the Premises Committee, cash advances may be made from the reserves of the Court for the purpose of urgent capital replacement measures and in order to meet any cash needs prior to the availability of non-budgeted resources (surplus and new States Parties contributions), as a temporary and prudent measure of last resort, for a limited amount, and with an agreed schedule of restitution;<sup>32</sup>

68. *Requests* the Oversight Committee, based on its report to the fourteenth session of the Assembly, to continue preparation of sustainable financial scenarios, including the use of budgeted and non-budgeted resources as well as of any loans, to be further refined in the period 2017-2019 in light of the cost-review exercise that will be conducted by the Premises Committee;

69. *Also request* the Oversight Committee to operationalize all aspects of the strategy on Total Cost of Ownership contained in its report;

70. *Welcomes with appreciation* that several States Parties made artwork donations to the permanent premises.

## IX. Governance responsibilities

71. *Requests* the Oversight Committee to continue to provide regular progress reports to the Bureau and to report back to the Assembly at its next session,

72. *Adopts* the current resolution and the Annexes thereto,

73. *Requests* the Bureau to fill the remaining vacancies in the Oversight Committee<sup>33</sup>.

## Annex I

### Cash flow projection 2015-2016

	YTD	Oct 2015	Nov 2015	Dec 2015	Jan 2016	Feb 2016	Mar 2016	Jun 2016	Oct 2016	Total
Cash opening balance		572,506	1,512,524	477,061	554,611	16,195	343,119	343,119	309,150	
Accounts payable		1,485,260								
Cash out CP + TP	185,223,981	2,774,722	8,578,355	1,022,450	5,338,416	73,076	-		989,000	204,000,000 *
Refund interest								543,969		543,969
Date of drawing = date of loan received on ICC Bank Account	85,200,000	5,200,000	5,492,892							95,892,892 **
Other Funding needed			2,050,000	1,100,000	4,800,000	400,000	-	510,000	679,850	9,539,850 ***
Cash balance		1,512,524	477,061	554,611	16,195	343,119	343,119	309,150	-0	

\* Based on an estimated final cost of €204 million.

\*\* Estimated maximum use of the loan under current scale and formula.

\*\*\* Based on an estimated final cost of €204 million.

<sup>32</sup> Identical to ICC-ASP/12/Res.2, para.17.

<sup>33</sup> See Annex V bis *Members of the Oversight Committee*

## Annex II

### Decision on Total Cost of Ownership

#### I. Introduction

1. The Total Cost of Ownership for States Parties to deliver their responsibilities as regards the permanent premises of the International Criminal Court (ICC) includes the following costs:

- (a) Financial costs (financing of the construction and transition activities). Such costs will have to be borne by States Parties individually, by repaying pro quota the loan, if they have not paid their contributions to the project in advance (one-time payment),
- (b) Operating costs (costs associated with running the building on a day-to-day business, including utilities, such as gas, electricity and water supply). These costs will (continue to) be included in the yearly budget proposals,
- (c) Long-term maintenance (preventive and corrective) and capital replacement (investments to replacing parts of the building that have a significant cost impact).

2. The permanent premises are the most important asset of the Court, and its value should be preserved at an adequate level, so that it can perform its function throughout its lifetime. Since the asset depreciation will start from the very moment the construction project is completed, a suitable funding and governance solution to the long-term maintenance and the capital replacement costs should be adopted by the same time the asset becomes available. Due to the lifetime impact of the capital replacement cost and the scale of financial interests involved, the solution found to this matter would appear to be the most important strategic matter, for States Parties when asserting their ownership on the permanent premises they have provided as the seat of the Court. The importance of this item *per se* calls for States Parties to consider the impact that it will have for them throughout the life span of the premises.

3. While final “technical” conclusions are available on this matter,<sup>1</sup> the Committee had until now reserved its position,<sup>2</sup> in light of the sensitive policy implications of the proposals received. Upon the advice received by the Committee on Budget and Finance at its twenty-fifth session, the final recommendation of the Committee is now submitted to the Assembly for decision at its fourteenth session.<sup>3</sup>

#### II. The “technical” evaluation

4. In 2013,<sup>4</sup> Committee established<sup>5</sup> a Working Group on Total Cost of Ownership (“working group”), tasked with a technical evaluation of possible options to fund building operating and maintenance costs, including any options for future States Parties to

---

<sup>1</sup> CBF/24/20, *Interim Report on the activities of the Oversight Committee*, 15 April 2015, Annex VI “Working Group on Total Cost of Ownership – Comprehensive Advice: how to organize and fund Capital Replacements”.

<sup>2</sup> CBF/24/20, *Interim Report on the activities of the Oversight Committee*, 15 April 2015, para. 50: “As it had noted at the outset of this exercise, the Committee preliminarily considered that the matter was at the end to be decided on the basis of the political feasibility of any technical option submitted. In that regard, the Committee will have to further consider the options formulated by the WGTCO in light of the factors involved for the preservation of the value of the premises, their functionality, as well as the schemes that States Parties might be ready to endorse both to govern and finance the long-term capital replacement and maintenance processes.”

<sup>3</sup> *Ibidem*, para. 51: “The Oversight Committee intends to finalize its work on the Total Cost of Ownership in 2015, once the advice from the Committee on Budget and Finance will be submitted to it. A draft recommendation of the Committee will then be submitted to the twenty-fifth session of the Committee on Budget and Finance for its final advice, so that the Committee can submit its finalized recommendation to the fourteenth session of the Assembly for a decision.”

<sup>4</sup> Pursuant to resolution ICC-ASP/11/Res.3, para. 8.

<sup>5</sup> Oversight Committee, *Terms of Reference Working Group Total Cost of Ownership (TCO)*, 19<sup>th</sup> March 2013.

contribute to the project costs. The working group, chaired by the Project Director,<sup>6</sup> concluded its technical considerations with a final report<sup>7</sup>.

5. The working group provided the Committee with an advice focused on ensuring the functionality of the premises and the preservation of the investment value. To this end, options had been considered pertaining to the organizational model, the funding strategy, the governance structure and contributions of new States Parties to the construction project. In summary, the working group assumed a schedule of costs for capital replacement over a period of 50 years, and suggested the following solutions:

- (a) To outsource the future maintenance to a general contractor, beginning on 1 January 2017;
- (b) To finance the estimated long-term capital replacement costs by building a fund to manage the approximately €300 million required over 50 years, with yearly contributions flattened at €4.3 million, so as to avoid one-off-payments from States Parties in the expenditure relevant financial years; and
- (c) To govern the process through the regular management and oversight structures (Court, Committee on Budget and Finance and the Assembly of States Parties), without establishing a permanent management body with the presence of States Parties.

### III. Analysis and solutions by the Committee

#### A. Policy level

##### 1. Overall elements

6. The Committee, who had participated at all stages to the activities of the Working Group, carefully analyzed its proposed solutions, and considered the following.

- (a) The Committee had expressed its concerns about the political feasibility of setting up a large-scale fund, primarily due to organizational and financial risk associated with tasking the ICC to run such fund, and the costs attached to its management;<sup>8</sup>
- (b) While funding in advance the future long-term costs might reflect some practice in the private sector, there have not been clear indications of the public international sector applying similar high standards;
- (c) States Parties have expressed a clear intention to perform a leading role in the future governance of the permanent premises, including by exerting a substantive control function in all owner-related issues, such as the long-term maintenance and capital replacement costs of the building;
- (d) The ownership costs of the premises are contributed equally by all States Parties, and fairness and equality require that new States Parties acceding the Rome Statute should also participate in the costs sustained by the membership to make the premises permanently available;
- (e) Experiences from other international organizations suggest that for the first 10 years it can be avoided to factor in any capital replacements costs;<sup>9</sup>
- (f) Experience of the Committee on the aggregated permanent premises costs should be taken into account, as regards users' requirements, their impact on the design and on cost developments, as well as the role of States Parties in that regard;

<sup>6</sup> The WGTCO was also participated by the Project Manager (consultant of the Project Director's Office), the Court, an Expert appointed by the Committee, and members of the latter.

<sup>7</sup> Working Group on Total Cost of Ownership, *Comprehensive Advice: how to organize and fund Capital Replacements*, dated 2 April 2015.

<sup>8</sup> CBF/24/20, *Interim Report on the activities of the Oversight Committee*, 15 April 2015, para. 50, *supra*, fn 2.

<sup>9</sup> Working Group on Total Cost of Ownership, *Visit to Geneva* ("FIPOT"), dated 25 September 2013 and *Visit to Vienna* ("Vienna International Centre"), dated 1 April 2014.

- (g) Since the working group's projected long-term costs are only an estimate - and require regular and timely monitoring and refining, as well as better assessment by a permanent governance structure - the currently projected expenditure spikes remain a working model, only.

## 2. Lessons learned

7. The Committee has identified the following lessons learned, upon which the decision of the Assembly as to the future governance and long-term preservation of the value of the permanent premises should be based on:

- (a) *Ownership role and feelings must be maintained at all stages*
- (i) As the fulfilment of the ICC mandate depends on the support received by States Parties, the latter should remain constantly convinced that the premises they provide the Court with also match their expectations. Requirements that are not objectively understood to be necessary for the Court to achieve its mission can alienate the support of the States Parties, and contribute to creating a politically negative environment around the Court;
  - (ii) Appropriate communication is necessary, but it must reflect contents that are measured and sensible, in line with both the international environment the Court is a part of, and of the accepted standards of other international organizations; and
  - (iii) An active role of States Parties in ensuring the consistency of the premises with the mission of the Court is an essential part of their ownership responsibilities and rights. This requires that the Assembly establishes and implements an effective control authority.
- (b) *Requirements drive the final cost*
- (i) Since changes in requirements over the medium to the long-term might be inevitable - as unpredictable might be the developments in their cost - the final cost envelope would tend to be higher than expected, and might also not match the budget constraints and attitude of States Parties;
  - (ii) During the construction project, States Parties had accepted that the needs of the Court be translated into features of the design without political interference, while the project management remained in charge of control on budget effects. Throughout the project lifetime, the adopted requirements have resulted in increasing stress for the budgeted resources. The actual cost impact of changes in requirements - although they might be cost-neutral at the relevant stage, as offset by other savings or reductions - cannot but be assessed at the project end. At later stages of the project, budget increases have become inevitable and not well received by States Parties; and
  - (iii) Once all requirements are accepted at earlier stages, financial resources would remain limited for adaptations that become necessary at later stages or otherwise inevitable (e.g., because of changes applicable local regulations), at which point a stricter budget attitude might result in limitations to the functionality of the premises.
- (c) *Effective oversight requires control*
- (i) To ensure the achievement of the ownership objectives of the Assembly, States Parties should remain in effective control of the processes needed to guarantee the asset value and functionality over time;
  - (ii) Should oversight functions be carried out only as observing and reporting functions - by verifying developments against whatever guidance framework exists in order to alert the Assembly of any deviation to such framework and/or for the purpose to request additional resources - States Parties' ownership expectations would not be fulfilled;

- (iii) In that regard, the role of States Parties has to be clearly framed as an active participation in the process, principally in the role of approving or not frameworks, conditions and plans, as well as other proposed actions and expenditures, including by reviewing requirements as they are proposed and implemented. Any oversight body that is not endowed with sufficient authority to control the contents of their action would also not be able to ensure the objectives it might be requested to achieve; and
- (iv) The control authority would require that States Parties take a more active role, so that they are enabled to follow the process of establishing the requirements and their cost estimates.

### 3. Governance consistency

8. Based on the above, the Committee submits that the future governance structure for the permanent premises should be based on the following main concepts and features:

- (a) *A States Parties representative body*, as follows:
  - (i) **Composition:** Representatives of States Parties, at the Ambassadorial level and preferably possessing relevant expertise; meetings would be held on a quarterly basis, or as appropriate;
  - (ii) **Observers:** Representatives of non-Member States Parties, of the Court, and of the Assembly's assurance mechanisms (External Auditor, Internal Auditor, Committee on Budget and Finance, Independent Oversight Mechanism);
  - (iii) **Expertise:** Availability of qualified technical independent experts, and experts that States Parties might wish to contribute, preferably on a pro bono basis;
  - (iv) **Mandate:** On behalf of the Assembly, monitor and oversee processes relevant to the exercise of the ownership rights and responsibilities, including
    - Long-term cost, functionality and value of the premises (total cost of ownership), and, in particular,
      - o Refine and verify assumptions and estimates on future requirements and costs,
      - o Prepare medium-term maintenance and capital replacement plans, as well as any additional proposal for financing means, including loans, to be submitted to the Assembly for adoption,
    - Identify issues related to the ownership of States Parties, and adopt strategic solutions,
    - Submit to the Assembly proposals for solutions of such matters that might have financial or policy implications exceeding its mandate,
    - Prepare further decisions of the Assembly for refining, adapting and implementing the governance framework,
    - **Authority:** Effective control on processes, i.e. strategic decision-making on the establishment, implementation and performance of the programme and of its budget, including on the users' requirements, with timely access to sufficient and detailed information,
    - **Role of other assurances:** Both the Committee on Budget and Finance and the External Auditor, within their respective mandates, would provide advice and recommendations to the governing structure;
  - (v) **Practice:** Build on the practice of, and lessons learned by the Oversight Committee, whose experience has been acknowledged by the External

Auditor and the Committee of Budget and Finance as a positive factor in the achievements of the permanent premises project,<sup>10</sup>

(b) *Main Contractor*

To be hired under the authority of the governing body, in consultation with the Court. The scope of the contract should, in the subsequent ten-year period, be adapted to developments of in-house resources, based on the management capacity of FMU and, when established, of the strategic leadership of the Director of the Project Office;

(c) *Director of the Project Office*

- (i) To be hired by, and remain under the full authority of, the governing body on the occasion of major capital replacements, only. According to the *Schedule Capital Replacements*<sup>11</sup> and subject to the review thereof that will be conducted over the first ten years, the establishment of a Project Office would be a needed and cost-efficient measure for States Parties to retain control over major capital replacement costs only on four or five occasions over fifty years (2036, 2041, 2051, and 2056). For that purpose, a Director of the Project Office (“Director”) might be hired sufficiently in advance of the expected replacement projects, while taking advantage of preparations undertaken by the Main Contractor and in cooperation with the Court, under the oversight of the States Parties representative body, with the assistance of its experts. Based on the experience in the construction project, and taking also into account the lower scale of a capital replacement project (although of a major nature), it is assumed that a Director could be recruited and his/her Office established two years in advance of each of the four major expected capital replacement projects. The Office should then, in total, be funded for a period of maximum five years, at a maximum average cost of €250,000 per year, taking into account synergies with the Main Contractor and the Court,
- (ii) Management functions within the scope of the activity mandated, with requirement to provide full information to the governing body in a timely manner, in order to proper decision-making and authorization of expenditures,

(d) *Relationship with the Court*

Management of the facilities outside the scope of the long-term maintenance and capital replacement, i.e. the short-term maintenance and operational costs, falls within the mandate of the Court, including the implementation of the contract with any Main Contractor. Other aspects of the ownership interests of States Parties may be also addressed through the governing structure, as appropriate.

## B. Funding

9. The recommendation of the External Auditor for “creating reserves for the renewal of [the] real estate capital in the financial year following the delivery of the permanent premises”<sup>12</sup> should be adopted and implemented taking also into account a number of mitigating factors, including:

- (a) Long-term impact of the asset depreciation;
- (b) Sustainability of early funding at a time when the organization and the operations of the Court, as well as higher operating costs resulting from the size of the building,<sup>13</sup>

<sup>10</sup> 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; 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.

<sup>11</sup> CBF/24/20, *Interim report on the activities of the Oversight Committee*, dated 15 April 2015, Appendix I.

<sup>12</sup> 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 38-47 and, in particular, para. 47 and *Recommendation 3*.

<sup>13</sup> ICC-ASP/14/10, *Proposed Programme Budget for 2016 of the International Criminal Court*, para. 390.

propose a significant increase in budgeted resources, while the majority of States Parties will have to start paying the investment cost and the interest on the loan;

- (c) Any available solution, both as financial (nature and scope of the reserves, including surplus) and funding sources are concerned;

10. The recommendation of the Committee on Budget and Finance is likewise that “a measure of reserves be built up in good time as the large spikes approach” and, while recognizing that “this is not an immediate issue, [...], it needs to be addressed in the near future”.<sup>14</sup>

11. **Funding targets**, as advised by the Committee on Budget and Finance<sup>15</sup> can be devised at this stage but, because of the need to conduct a further cost review, will need to be revised in the period 2017-2018.

12. At this stage and for the purpose of building funding targets, the Committee can only consider the cost impact of capital replacement on the provisional bases indicated by the working group. From this perspective, funding targets are provisionally devised in a significantly conservative manner, since in future they will need to be revised in light of a meaningful cost review [see below, “Costs”].

13. Such targets would include the following alternatives to address a 50 year period:

- (a) **Full funding of around €300 million costs** estimated by the working group, by assessing flattened contributions of €4.3 million per year, starting in 2017, and managed by the Court through a Fund.

This is the scenario proposed by the working group, and has the advantage of providing full certainty as to the financing of future needs. However, the preservation of the value of the asset is considered at standard level and with funding mechanism that has no precedent in other International Organizations, and States Parties are unlikely to support this scenario;

- (b) **Partial funding of the long-term cost**, limited to contingencies (in the worst case, estimated at €5.0 million over the first 10 years) and to minor/medium capital replacement costs (€40 million over 50 years), **through a mix of budgeted and extra-budgetary resources** (surplus and new States Parties contributions) that would remain under the control of a governance structure of the Assembly.

Starting in 2017, States Parties would only be asked to contribute to a Revolving Fund, for contingencies, in the amount of €0.5 million, which would be reduced to €0.4 million after 10 years. At that point (2016) an additional contribution of €1.0 million would be needed to cover the long-term, low to medium size investment costs. The scenario has the advantage of keeping low the ownership costs of the premises at least over the first 20 years, and retaining full control over their administration by the Assembly. However, uncertainties would remain for the most significant amount of resources that would be required on the occasion of the four major cost spikes, while also requiring additional discussion on the long-term investment of the contributions assessed;

- (c) **Partial funding of the long-term cost, limited to the use of surplus and new States Parties contributions, only, with cash advances from the Court’s reserves to bridge funding gaps.**

This option would have a lower impact on States Parties (since no assessed contributions would be levied, and only surplus is appropriated), However, the accumulated surplus would still need to be managed, and the need to increase the surplus level might contradict the interest of the Assembly to receive more accurate annual budget proposals..

14. The three indicated funding targets or alternatives respectively assume that the capital replacement costs will be funded only through assessed contributions (1. “Full funding” etc.), with a mix of assessed contributions and non-budgeted resources (2. “Partial

<sup>14</sup> 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 172.

<sup>15</sup> *Ibidem*.



funding” etc.), or only with non-budgeted resources although limited to minor/medium cost spikes (3. ”Partial funding...with a mix...”).

15. **Non-budgeted resources** (i.e., without levying additional contributions from States Parties) would become available as follows:

(a) *Surplus*

Any surplus from 2014 and 2015 might have to be used to offset the funding needs of the permanent premises project, following the decisions taken by the Assembly in 2013 and 2014. Instead, surplus from financial years 2016 onward might be made available to fund capital replacement costs (in the Revolving Fund until it is topped up, and later the Capital Fund itself, under the scenario (2) above). While the availability of surplus cannot be anticipated with certainty (since it depends on the budgetary performance, the Un-liquidated Obligations, and the level of arrears) in the period 2009-2013 the average annual surplus has been of €1,7 million (including the negative result in 2013). Based on these results, it is very prudently assumed that an average of €1 million surplus might become available for the purpose of financing the capital replacement costs;

(b) *Surplus from one-time payments*

Excess contributions to the permanent premises project have been paid by 11 States Parties, for a total amount of €1.84 million. At the time of final calculations, on 30 June 2016, this provisional sum will become final, and States who would have overpaid are entitled to have their share in the project surplus returned. The Committee proposes that the surplus is instead retained (in the Capital Fund, if this is established) and calculated to offset future contributions due by the same States Parties against the long-term capital replacement costs, not differently from what normally happens with the return of any surplus in the annual budget cycle;

(c) *New States Parties' contributions*

While there is no safe expectation possible as to the amount of funding that might become available from future accessions of States to the Rome Statute, in the long-run this might hopefully become a reality, which would also ensure that all States Parties equally contribute to the ownership of the premises.

16. **Budgeted resources** are assumed under the scenarios/targets (1) and (2) on the assumption that other non-budgetary funding sources (i.e. surplus and new States Parties contributions) would not provide a sufficient degree of certainty. The three scenarios address the use of budgeted resources as indicated below.

17. Scenario 1): As detailed in the conclusions of the working group, it aims at providing full funding and financial certainty over the 50 year period and, for this reason, it requires a flat assessed contribution of €4.3 million per year.

18. Scenario 2): It only aims at addressing the low to medium cost spikes over the period, while it postpones to further consideration a mechanism for full funding, upon a thorough cost review. If this scenario was selected, the following assessed contributions would be needed:<sup>16</sup>

**1. Annual fixed contribution: €500,000.**

19. A fixed contribution of €500,000 would be accumulated with priority for the Revolving Fund, starting in 2017, so as to ensure that its maximum level of €5 million be reached over the first ten years, irrespective of the availability of the other funding source, i.e. surplus that might become available from the financial years 2016-2017 (assuming that the 2014-2015 surplus will be absorbed by the funding needs of the permanent premises

<sup>16</sup> Under this scenario, the contribution plan for States Parties would be as follows: (a) From 2017: €500,000 per year, to finance the Revolving Fund and, when in excess of the maximum amount thereof (€5 million), the Capital Fund; (b) From 2021: additional €1 million per year to fund the Capital Fund, and (c) From 20[xx]: additional €[xxx] million would be needed to fund four major spikes in 2036, 2041, 2051, and 2056, following the cost review. A funding mechanism will have to be established that takes into account options such as one-time payments, loans, and/or annual flattened contributions.

project). With the very conservative assumptions that no more than €1 million surplus per each of 2016-2017 years will become available, and that an amount of €2.0 million is used for urgent repairs over the first ten years, the fund would remain in balance after ten years, i.e. in 2026.

20. Instead, if the maximum level in the Revolving Fund is achieved earlier (higher than the €1 million assumed surplus per year becomes available), the annual €500,000 contribution would be used to fund the Capital Fund. In any case, after 2026 the likelihood of the use of the Revolving Fund should be further reduced, as medium-term capital replacement plans (3 to 5 years) would allow for refined budgeting to be funded through the Capital Fund. This would allow to more safely rely on the fixed annual contribution to replenish the Capital Fund;

## 2. Contributions against medium-term plans low to medium spikes: €1.0 million

21. Since the Assembly will be called on to approving medium-term plans (3 to 5 years projected capital replacement costs) effective from 2026 (Year 11), preparation for such plans should include a multi-annual contribution to ensure its funding. Medium-term plans for the period 2026 to 2064, with the exception of the four higher spikes assumed by the WGTCO, might be safely funded with a flattened contribution of €1.0 million. This amount would be in addition of the €500,000 that would become available when in excess of the maximum level of the Revolving Fund, minus an assumed 20% that might be needed for replenishments of the latter, depending on its actual use (i.e., in 10 years, €5 million, minus €1 million, or €400,000 per year). A total of €1.4 million would thus be accumulated in the Capital Fund every year, starting in 2021, for the purpose of covering low to medium term spikes (€1-12 million) in the period 2026 to 2064, and keeping in reserve as of 2026 an amount of €5 million (contributions from 2012 to 2026). As a result, the following amounts would become available to cover such costs, to be incurred in the periods indicated below (as estimated by the WGTCO):

2021-2025 (5 years)	= €5 million	(reserve in Capital Fund)
2026-2035 (10 years)	= €14 million	(against approx €8 million spikes)
2036-2040 (5 years)	= €7 million	(against approx. €6.5 million spikes)
2041-2050 (10 years)	= €14 million	(against approx. 10 million spikes)
2051-2064 (14 years)	= €15.4 million	(against approx. 16 million spikes).

22. Consequently, with a flattened €1 million assessed contribution levied in the period 2021-2064, low to medium level spikes would be covered, and a total of approximately €16 million would remain available to partially fund major spikes.

## 3. Contributions against the four significant spikes

23. The higher spikes assumed by the WGTCO would materialize in 2036 (€50.1 million), 2041 (€72 million), 2051 (€11.8 million), and 2056 (€5.4 million). The WGTCO cost estimate brings the total for these spikes, only, to over €248 million. Because of such significant amount, dealing with these spikes under the “scenario” approach with the aim to providing financial security prior to the required cost review to be conducted over the period 2017-2018, might be pure speculation. It is rather suggested that this matter be addressed once revised cost estimates will become available, which would enable planning with sufficient advance for the first such spikes, in any case not later than ten years ahead of it, i.e. in 2026. Meanwhile, the funding scenario for the low to medium spikes would provide some measure (€16 million) of certainty on the resources needed;

24. Scenario 3). No use of budgeted resources would be made. It is assumed that States Parties would not agree to establish neither the full-fledged fund under scenario (i) proposed by the working group, nor the more limited funds under scenario (ii) (Revolving Fund and Capital Fund). Future capital replacement cost, at the current stage, would only be addressed by non-budgeted resources, i.e. surplus and new States Parties contributions.

25. **Management of resources.** The Committee is mindful that under any of these scenarios/funding targets resources, either assessed contributions or/and extra-budgetary

ones, will need to be managed within the reserves of the Court, as multi-annual funds. However, the scenarios address this matter from a different perspective. While Scenario (1) would leave to the authority of the Court the management of the fund, without a role for an ad hoc body of the Assembly, Scenarios (2) and (3) would in any case subject decision making to the control authority of a Premises Committee of States Parties.

26. **Funding mechanism.** The Committee is recommending that the Assembly decides at its fourteenth session on the establishment of a strong governance framework for the total cost of ownership, which is required to ensure that long-term costs are adequately revised, and preparations for the organization and the funding of such costs remain under control of States Parties.

27. At the same time, the Committee endorses the recommendation of the Committee on Budget and Finance, that “a measure of reserves [...] is not an immediate issue [while] it needs to be addressed in the near future.”<sup>17</sup>

28. From this perspective, the Committee recommends that a positive decision is made on the use of extra-budgetary resources (future surplus and contributions of new States Parties), while a decision on the use of budgeted resources (assessed contributions), in a context of sustainability for States Parties and in light of the achievements of the cost review exercise, is deferred upon further consideration by the Committee in 2016, and by the Premises Committee in 2017-2018.

### C. Costs

29. As concurred by the Committee on Budget and Finance, the future projected costs will need to be further reviewed,<sup>18</sup> in particular in light of existing standards and practices in other International Organizations (international public sector). However, considering that capital replacement costs would not be factored in for the first ten years, the Committee is convinced that the cost review could be safely conducted in the period between 2017 and 2023, in preparation for the adoption of a first medium-term capital replacement plan. The Committee suggests to conduct the cost review in good time, over the period 2017-2019.

30. As to the suggestion by the Committee on Budget and Finance that scenarios be developed illustrating the amount and time profile of these costs,<sup>19</sup> the Committee is mindful of the costing exercise conducted by the working group in 2013-2014, based on assumptions that included the full preservation of the asset value until the end of its lifetime, and standard quality levels in the Dutch market (“condition scores”).

31. While noting that a precise definition of the amount and timing of capital replacement costs to be incurred in the next 50 years requires a thorough review of the needs for the all the building elements, based on their lifetime expectancy and conditions of maintenance, at this stage the Committee can define the criteria that should be followed in the indicated 2017-2019 period to achieving such scenarios in a reliable manner and consistently with their political feasibility.

32. The Committee considers that, in order to achieve a meaningful cost review, this exercise should be conducted as follows:

- (a) Application of practices of the international public sector. In particular, practice of the private sector should not be considered,
- (b) Consider the experience developed at the seat of major International Organization, primarily in Geneva and Vienna where, for the vicinity to The Hague and the extension of the Headquarters, significant contributions can more easily be provided,
- (c) Lifetime of assets and level of maintenance (condition scores) should strictly follow the experience of the international public sector.

---

<sup>17</sup> 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 172.

<sup>18</sup> 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 172.

<sup>19</sup> *Ibidem*.

## D. Work Plan

33. A **work-plan** for conducting the necessary cost review and funding mechanism analysis should include the following basic steps:

2017

- Conduct a survey of the long-term capital replacement amount and timing of costs, as well as of the funding models. Such survey should cover the major International Organizations, including at UN Headquarters in Geneva and Vienna, and host States of such International Organizations. Lessons learned from Vienna and Geneva appended to this report can be further discussed with the responsible officials. Ad hoc meetings or seminars may be convened.

2018

- Revise the cost estimates in light of the findings of the survey, so as to ensure adherence of lifetime expectancy of the different building elements and maintenance levels to international practice,
- Develop a funding model that would ensure certainty on the funding of the four major spikes in 2036, 2041, 2051, and 2056. Such model should ,
  - o Take into account a combination of one-time payments, loans, and/or annual flattened contributions,
  - o Ensure that contributions are calculated and assessed sufficiently in advance of the capital replacement events, also taking into account any uncertainties on non-budgeted resources (surplus and new States Parties contributions), while preserving the fairness of the system, so as all States are treated equally, and
  - o Overall, ensure the sustainability for States Parties over the long period.

2019

- Decisions of the Assembly operationalizing the funding mechanism (schedule for the collection of assessed contributions against the revised costs, and/or approval of loans).

34. A more detailed **roadmap** is appended, which should be subject to annual review at the initiative of the governing body.

## E. Governance

35. 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.

36. 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.<sup>20</sup> 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. The Committee on Budget and

<sup>20</sup> 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 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.

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;<sup>21</sup>

## F. Assurances

37. The Total Cost of Ownership has important financial implications for States Parties, and is to remain a current matter over the lifetime of the premises. Consequently, the Committee is convinced that the implementation of any decision taken by the Assembly at its fourteenth session should remain within the advisory scope of both the Committee on Budget and Finance and of the External Auditor. Under the oversight of the Premises Committee and with the recommendations of both the assurance mechanisms, the Assembly will in future be able, if needed, to adapt the implementing process as required. The Committee will include in its future reports to the Committee on Budget and Finance any relevant update.

## Annex III

### Roadmap

#### 2016

##### *Financial reporting*

Upon the audit of the project and the recalculation of contributions (June-July), the Oversight Committee submits its final financial report to the advice of the Committee on Budget and Finance (September) and finally to the fifteenth session of the Assembly of States Parties.

##### *Governance*

The Oversight Committee is terminated at the fifteenth session of the Assembly, and full functions are assumed by the Premises Committee.

#### 2017

##### *Cost and funding*

A survey of the long-term capital replacement model and costs is conducted. Such survey should be conducted across the major International Organizations, including at UN Headquarters in Geneva and Vienna, and host States of such International Organizations.

##### *Contributions*

States Parties start to be assessed contributions of €500,000 per year, to finance the Revolving Fund and, when in excess of the maximum amount thereof (€ million), the Capital Fund.

#### 2018

##### *Cost*

Cost estimates are revised in light of the findings of the survey, so as to ensure adherence of maintenance level to international practice.

---

<sup>21</sup> 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.

*Funding*

A funding model is developed, that would ensure certainty on the funding of the four major spikes in 2036, 2041, 2051, and 2056. Such model should.

Take into account a combination of one-time payments, loans, and/or annual flattened contributions.

Ensure that contributions calculated in advance can be lowered in following years, depending on the availability of non-budgeted resources (surplus and new States Parties contributions), while preserving the fairness of the system, so as all States are treated equally.

**2019***Funding*

Decisions of the Assembly operationalizing the funding mechanism (schedule for the collection of assessed contributions against the revised costs, and/or approval of loans).

**2021***Contributions*

States Parties start to be assessed additional €1 million contributions per year, to finance the Capital Fund. Including yearly contribution to the Revolving fund, assessed contributions reach annually €1.4 million.

**2023**

First medium-term plan preparation, for the period 2026-2030.

**2026**

Revolving Fund reaches target €5 million.

First medium-term plan starts.

Second medium-term plan is prepared, for the period 2031-2035.

Third medium-term plan is prepared, for the period 2036-2040.

Asset value is depreciated at 90%, for the purpose of new States Parties contributions.

**2034**

Project Director is recruited, in preparation of major project of 2036 .

**2037**

Third medium-term plan is prepared, for the period 2041-2045.

**2039**

Project Director is recruited, in preparation of major project of 2041.

**2049**

Project Director is recruited, in preparation of major project of 2041.

**2054**

Project Director is recruited, in preparation of major project of 2056.

## Annex IV

### Contributions of new States Parties

1. Differently from other international organizations, the premises of the International Criminal Court are provided - and their value will in future be maintained - by assessed contributions of 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.
2. 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.
3. New States Parties required to pay for the permanent premises project costs would not be assessed retrospectively of such costs. 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.
4. Contributing against the asset value is not expected to represent a discouraging factor for States to accede to the Rome Statute, as their financial obligation would be aggravated. 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.
5. A fair, sustainable, simple, functional and transparent mechanism for sharing the permanent premises project costs among the present and future membership is hereby established, based on the following:
  - (a) New States Parties shall be assessed against the total cost of the permanent premises project calculated as follows:
    - (i) Inclusive of total project costs<sup>1</sup> (including aggregated construction, transition, and organizational costs),<sup>2</sup> over the project period 2008-2016,
    - (ii) Lifetime of asset = 100 years,<sup>3</sup>
    - (iii) Value of asset = 100% over the first 10 years (2016-2025),<sup>4</sup> and 90% after that,<sup>5</sup>
  - (b) Payment of new State Parties' contributions shall 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.<sup>6</sup>

<sup>1</sup> Currently estimated at [€13,617,600], 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.

<sup>2</sup> Expenditures of PDO (MO VII-1) and the Court (POPP) throughout the project, 2008-2016.

<sup>3</sup> The period is based on the experience of FIPOI (*Fondation des Immeubles pour les Organisations Internationales*), a Swiss foundation that runs a multi-billion asset value for the purpose of hospitality of International Organizations.

<sup>4</sup> It is assumed that no long-term maintenance and capital replacement will take place in the period.

<sup>5</sup> 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.

<sup>6</sup> Article 126, paragraph 2, of the Rome Statute.

## Annex V

### Members of the Oversight Committee<sup>1</sup>

#### African States

1. *[minimum requirement]*

#### Asian and Pacific States

2. Japan
3. Republic of Korea

#### Eastern European States

4. *[minimum requirement]*

#### Group of Latin American and Caribbean States

5. Chile
6. *[to be filled]*

#### Western European and Other States

7. France
  8. Germany
  9. *[to be filled]*
  10. *[to be filled]*
- 

---

<sup>1</sup> As of 24 November 2015.