

Seventh session

The Hague

14 - 22 November 2008

Report of the Oversight Committee on the permanent premises

Note by the Secretariat

Pursuant to resolution ICC-ASP/6/Res.1 of 14 December 2007, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report of the Oversight Committee on the permanent premises.

Report of the Oversight Committee on the permanent premises

I. Introduction

1. At the 14th meeting of its sixth session, on 14 December 2007, the Assembly of States Parties established an Oversight Committee of States Parties (hereinafter “the Committee”) as a subsidiary body of the Assembly to provide strategic oversight for the permanent premises project in accordance with annex II to resolution ICC-ASP/6/Res.1.¹
2. The present report is submitted in accordance with paragraph 15 of annex II to the resolution which provides that the Committee shall provide regular status reports to the Bureau and shall submit any draft resolutions or information to the Assembly through the Bureau. A draft resolution for consideration by the Assembly is contained in the addendum to this report.
3. At its 1st and 2nd meetings, held on 30 January and 13 February 2008 respectively, the Committee appointed H.E. Mr. Jorge Lomonaco, Ambassador of Mexico to the Netherlands, as Chairperson, and H.E. Mr. Lyn Parker, Ambassador of the United Kingdom of Great Britain and Northern Ireland to the Netherlands, as Vice-Chairperson.
4. The Committee identified the issues that would require its attention in the near future. They included the recruitment of the Project Director, preparation of the proposed budget for 2009 for major programme VII, consideration of financing options, including the possibility of attracting private contributions, and issues relating to the architectural design competition. The Committee established two sub-groups, one on the recruitment of the Project Director and one on the financing of the project.
5. As at 29 October 2008, the Committee had held 14 meetings to consider the various issues under its mandate, including the preparation of a draft resolution.

II. Recruitment of the Project Director

6. The sub-group on the recruitment of the Project Director held 11 meetings to advance preparations for the selection and hiring of a Project Director. In particular, the sub-group considered the vacancy announcement and made recommendations on the best method of recruitment.
7. In light of the specialized nature of the position to be filled, the Oversight Committee agreed, at its 3rd meeting, held on 27 February 2008, to proceed with a tender procedure to invite bids from recruitment agencies.
8. A technical evaluation panel, consisting of experts from the host State and the Court, and the Chairperson of the Committee, reviewed the six bids received and recommended that the Committee invite two recruitment agencies to make a presentation and provide further details of their respective offers.
9. Taking into account the geographical reach of their network, their specialization in the field of property and construction and the fact that their offer was within budget (i.e. €34,556), the Committee agreed, at its 5th meeting, held on 19 March 2008, to contract Michael Page International to conduct a recruitment process.

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* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III A, resolution ICC-ASP/6/Res.1, paragraph 5 and annex II.

10. The contract, signed by both parties on 4 April 2008, specified that Michael Page International would submit a shortlist of candidates to the Committee for its consideration. In addition to providing executive recruitment services, Michael Page International would process and evaluate the applications received via the Court's website. On 14 April 2008, the vacancy announcement was posted on the website of the Court, specifying 18 May 2008 as the deadline for applications.

11. At its 8th, 9th and 10th meetings, held on 14 May and 5 and 17 June 2008 respectively, the Committee agreed that the selection panel would consist of the following members:

Chairman

1. Mr. Ken Jeavons (State Party expert)

States Parties' representatives

2. Ms. Birgit Frie (Germany)
3. Mr. Erasmo Lara (Mexico)
4. Mr. Andrzej Ryng (Poland)
5. Mr. Donggy Lee (Republic of Korea)
6. Ms. Yolande Dwarika (South Africa)

Experts

7. Mr. Thomas Schuster (Court expert)
8. Mr. Roel van der Mark (host State expert)

12. The remaining members of the Committee were granted observer status. The Committee further agreed that, in the event of a candidate possessing the same nationality as, or having an established link with, an individual involved in the selection process, the latter would recuse himself or herself from participating in the interview and evaluation of that particular candidate.

13. Michael Page International received 172 applications. From among these, 17 candidates were selected to participate in interviews. Subsequently, six candidates, of whom four had applied through the website of the Court, were shortlisted by Michael Page International on the basis of their qualifications and experience in the field of architecture and construction or in working for an international organization. On 23 June 2008, one candidate withdrew his application for the position. The interviews by the selection panel were held on 30 June and 1 July 2008.

14. At the 11th meeting of the Committee, held on 2 July 2008, the Chairman of the selection panel, Mr. Ken Jeavons, presented the report of the selection panel wherein it recommended that Mr. Hans Heemrood (Netherlands) be selected as the Project Director due to his experience in complex projects in the Netherlands, his familiarity with and commitment to the project, his knowledge of risk and crisis management as well as cost and time management and his teamwork, project management and overall professional skills.

15. In light of the competencies of the selected candidate, the Registrar agreed to extend, in accordance with regulation 9.5 of the Staff Regulations, the age limit to allow for the appointment of Mr. Hans Heemrood for a three-year term. In this connection, the Court confirmed that his appointment under the age limit extension would not have any programme budget implications.

16. At the same meeting, the Committee endorsed the recommendation of the selection panel. Mr. Hans Heemrood assumed the position of Project Director on 1 October 2008.

17. In preparing the proposed programme budget for 2009 for major programme VII, the Committee agreed that all costs relating to the staffing and operation of the Project Director's Office should remain within the ambit of major programme VII.

III. Financing of the project

18. Taking into account the advice provided by the Committee on Budget and Finance in the report on the work of its tenth session,² the sub-group on financing continued its consideration of options for financing the construction of the permanent premises, with a particular focus on the offer of a loan contained in the letter dated 25 January 2006 from the Minister of Foreign Affairs of the host State to the President of the Assembly of States Parties.³

19. The Chairperson of the Committee presented to the sub-group a concept paper, dated 20 May 2008, containing a draft flexible financing scheme for the construction of the permanent premises (see annex to this report). The objective of the flexible financing scheme was to guarantee funding for the project by securing a line of credit of up to €200 million, through acceptance of the host State loan, while not excluding alternative sources of financing, such as direct contributions or private donations.

20. The concept paper - the contents of which were approved by the host State - provided that acceptance of the host State loan would not create any legal obligation for the Court to make use of the full loan or in any way restrict the Court in identifying alternative sources of funding. In addition, in the event of the €200 million not being fully utilized at the end of the project, the host State had agreed to reduce the amount of the loan to be repaid with an amount corresponding to 17.5 per cent of the non-utilized part.

21. At its eleventh session, the Committee on Budget and Finance endorsed the financing scheme as it combined flexibility for States Parties with a flexible cash flow arrangement that would meet the needs of the project.⁴

22. Several elements contained in the concept paper were considered by the Committee in the context of a draft resolution (see the addendum), which is submitted to the Assembly of States Parties for consideration at its seventh session.

One-time payments

23. States Parties would have the opportunity to make one-time payments (i.e. through a fixed schedule of one or more instalments) of their assessed share in the permanent premises project, subject to a possible adjustment once the final cost of the project was determined. States selecting this option would not be assessed for the accrued interest and the repayment of the host State loan to the extent that they had contributed to the project by making one-time payments.

24. In order to facilitate the financial planning of the project, the Committee agreed that it would be advantageous if States Parties were to start making their one-time payments as soon as possible, so as to be in a position of capitalizing the permanent premises project. For such purposes, the Committee recommended including a fixed date for States Parties to communicate by mid 2009 their decision to make one-time payments, which would commence as early as 2010.

² ICC-ASP/7/3.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, resumed fourth session, New York, 26-27 January 2006* (International Criminal Court publication, ICC-ASP/4/37), annex IV.

⁴ ICC-ASP/7/15, paragraphs 110 to 122.

25. It was suggested that a special account be established for the purpose of holding and managing such one-time payments, so as to utilize these funds to fulfil payment obligations as of the beginning of the project, which would lower the final amount to be borrowed from the host State.

26. The Committee on Budget and Finance recommended that any interest earned on the one-time payments held should be capitalized in the special account.⁵ Furthermore, the Assembly would have to define the purpose of such an account in accordance with regulation 6.5 of the Financial Regulations and Rules.

Payment of interest and repayment of the loan

27. The Committee suggested that, as of the first utilization of the loan, payment of the accrued interest should be included in the proposed programme budget of the Court, either through the establishment of a new major programme or of a separate capital fund for such purpose, which would, once the project was finalized, also regulate the repayment of the loan through fixed annual instalments.

28. The Committee on Budget and Finance considered the issue⁶ and agreed that both options for the payment of interest and repayment of the loan were viable. The Committee observed that costs would need to be assessed according to a modified scale of assessments which would exclude those States Parties that had opted for a one-time payment of their assessed share.

29. At the 12th meeting, held on 20 August 2008, the host State informed the Committee that it would wish to make parts of the loan available to the Court on a yearly or half-yearly basis. Interest would accrue as of the date that the funds were transferred to a separate account of the Court. The Committee on Budget and Finance recommended that any interest earned by the Court on funds held in such account should either be capitalized into the project fund or offset as income against the assessed contributions for repayments of interest.⁷

2009 costs of the project

30. The costs to be incurred by the permanent premises project in 2009, which are estimated to be €6 million, would be drawn from the host State loan. This is the only means of financing the 2009 costs without increasing the regular budget of the Court and it would allow the host State to make the loan operational.

Authorization of contracts and expenditures

31. A system should be established for the authorization of expenditures and/or contracts with financial implications up to certain thresholds. Annex V to the draft resolution contains proposals to that effect which may require additional refinement prior to the seventh session of the Assembly. The Committee on Budget and Finance recommended that such a system, if approved by the Assembly, be reviewed after one year.⁸

⁵ Ibid., paragraph 117.

⁶ Ibid., paragraphs 114 to 116.

⁷ Ibid., paragraph 118.

⁸ Ibid., paragraph 121.

Cost estimates

32. The Committee observed that the cost estimates for the project contained in resolution ICC-ASP/6/Res.1 were, at this stage, still valid⁹ and that more refined estimates would be available after completion of the architectural design competition. The Committee proposed that, on an annual basis:

- (a) The Project Board submit, for consideration by the Assembly of States Parties, more detailed estimates of the ultimate cost envelope on the basis of updated information; and
- (b) The Project Director be requested to report, through the Oversight Committee, on the realization of previous year's estimates and the overall level of expenditure.

33. The Committee further observed that costs related to the project but not directly related to the construction could only begin to be identified and quantified once the design phase had advanced. In accordance with paragraph 6 (c), of resolution ICC-ASP/6/Res.1, the Committee agreed to consider this issue in more detail next year.

Criteria for awarding a contract to the design team

34. The Oversight Committee further suggested requesting the Project Board to observe, in its negotiations with the prize-winners of the architectural design competition, the procedure for awarding a contract to the design team contained in annex I to the draft resolution.

⁹ *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* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III.A, resolution ICC-ASP/6/Res.1, preambular paragraph 10.

Annex

Flexible financing scheme for the construction of the permanent premises of the Court

Submitted by the Chairman of the Oversight Committee*

Objective

1. Guaranteeing the funding of the project by securing a line of credit for up to the project's estimated total cost, while keeping the options open to identifying and, if appropriate, applying alternative sources of funding (i.e. regular budget, upfront contributions, donations, grants, other loans).

Vehicle

2. Accepting the offer of the host State¹ but leaving the final amount of borrowing to the Court's discretion. The total amount of funds borrowed from the host State might be under, but in no circumstances above, a cap of 200 million euros.

Conditions

3. The Court will accept the host State's offer as a **line of credit** under the following conditions:

- (a) The host State will make available a line of credit of 200 million euros at subsidized annual rate of 2.5 per cent.
- (b) The Court will determine the total amount of funds it will draw from the line of credit. If the total cost of the project is less than 200 million euros or if the ICC identifies alternative sources of funding (i.e. regular budget, upfront contributions, donations, grants, other loans) during the development and/or construction of the project for all or parts of it, the Court may draw from the line of credit less funds than the cap of 200 million euros, without any penalty from the lender.
- (c) The host State will capitalize the ICC, **at the end of the project**, with the proportionate amount of the subsidy applied to the interest rate of the funds that were not drawn from the line of credit. An indication of how the capitalization of the subsidy would be calculated is:
 - (i) €35 million if no funds are borrowed
 - (ii) €26.250 million if €50 million are borrowed
 - (iii) €17.5 million if €100 million are borrowed
 - (iv) €8.750 million if €150 million are borrowed
 - (v) €0 if all €200 million are borrowed

* The chairperson of the Oversight Committee submitted this document as a "concept paper" on 20 May 2008.

¹ Loan of up to €200 million for a period of 30 years at a subsidized rate of 2.5 per cent annually. Offer contained in letter dated 25 January 2006 from the Minister of Foreign Affairs of the host State to the President of the Assembly of States Parties, in: *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, resumed fourth session, New York, 26-27 January 2006* (International Criminal Court publication, ICC-ASP/4/37), annex IV.

As demonstrated in the above calculation, the amount is equal to 17.5 per cent of the non-utilized part of the €200 million loan.

In cases (ii) to (iv), the Court will apply these funds to the repayment of the line of credit and/or loan(s) contracted for financing the project.

- (d) Interests will be levied by the host State on monthly basis and will be applied only to funds drawn to the date.

Upfront contributions²

4. States Parties will be given the possibility of paying upfront their respective contributions³ to the project of the permanent premises. State Parties that choose this option will therefore be excluded from the assessments for the repayment of the loan(s).

5. Upfront contributions will be subject to an adjustment, at the end of the project, when the total cost of the permanent premises will be assessed and divided proportionately upon States Parties.

Additional measures

6. According to Resolution ICC-ASP/6/Res.1 (para. 11), the ICC Permanent Premises Trust Fund (ICC-PPTF) would become operational. Its sole purpose will be to hold and manage funds dedicated to the project, with full independence from the Court's regular budget. ICC's financial rules might need to be amended so as to:

- (a) Allow the ICC-PPTF to receive funds from different sources;
- (b) Authorize the Court to contract loans, lines of credit, receive upfront contributions and accept grants or donations for the sole purpose of building its permanent premises; and,
- (c) Allow for, if so decided by the ASP, transferring underspend funds of the Court's regular budget to the ICC-PPTF for the sole purpose of building its permanent premises.

7. Encouraging NGOs, members of the civil society and/or high profile-celebrities, with a track record of commitment to the Court's mandate and objectives, to establish trust-funds where funds raised for the Court's permanent premises could be deposited. Once authorized by the ASP – either directly or through the Oversight Committee – funds raised might be transferred to the ICC-PPTF and applied to the project.

Other considerations (repayment)

8. Further consideration – including expert advice – would be needed to evaluate the financial implications for both the ICC and States Parties of the following:

- (a) Whether, in light of the views expressed by the CBF⁴, the ICC should start repaying the funds borrowed from the host State immediately after its first withdrawal (i.e. the next calendar year) or at the end of the project.

² Later referred to as "One-time payments".

³ Calculated based on each State Party's contribution to the ICC's regular budget at the time.

⁴ Report of the Committee on Budget and Finance on the work of its tenth session (ICC-ASP/7/3), paras. 66 and 67.

(b) Modalities for the repayment of the loan and the accrued interest by States Parties, including options such as incorporating the repayment obligation in the regular budget of the Court, establishing a separate system for issuing assessments for the permanent premises, or a combination (i.e. a single annual invoice itemized in regular budget contribution and permanent premises contribution).

9. Period of repayment of the loan. The host State's offer contemplates a 30 year period for repayment of the loan. However, consideration could be given to a shorter period.

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