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Report on the activities of the Oversight Committee

Addendum II

Total Cost of Ownership

Contents

Annex VII

Lessons learned on Total Cost of Ownership[1]

I. Visit to Geneva on 25 September 2013

1. Visit to Geneva on 25 September 2013

(a) The PDO and the Court (Maria) were there the day before, as well, for visiting WHO and WMO. I travelled for the day with the Expert, Mr. Franke, and Peter Timmermans.

(b) The whole party went to **WTO** and to the **Maison de la Paix** (MdP - a foundation contributed by the Swiss public authorities).

(c) Finally, Pierre Gilliot provided us with an illustration of the experience of **FIPOI** over 25 years in managing 1 billion euro of real estate investment (5 main buildings plus many smaller others).

2. The two projects visited yesterday were of comparable size and complexity with the Permanent Premises. Both of them are projects just completed after a process of 5-6 years long. However, while WTO is a total refurbishment and expansion of preexisting buildings, the MdP is an entirely new construction. Figures on the staff/visitors/sqm are also comparable.

WTO = 850 staff, up to 1.000 visitors (mostly diplomats of 159 MSs), 37.000 sqm, CHF 200 million

MdP = 400 staff, 400 to 1.000 visitors (mostly university students), CHF 183 million

3. In summary the findings are as follows:

(a) Maintenance is kept in house as management and strategy, with Units (FMU) of 9 for WTO and 20 for MdP (in this case also small and urgent maintenance is done in-house),

(b) In-house resources manage outsourced resources, i.e. contracts with separate external companies are entered (e.g., cleaning, security),

(c) MdP does not foresee to change this policy, i.e. they will address also capital replacement through in house resources,

(d) On the contrary, WTO is committed to developing, in a first period of up to 10 years after the end of the construction, sufficient in-house experience in its FMU of 9. At that point, they intend to select a general contractor for carrying out all the maintenance. This would allow them to scale down their current in-house resources of 9, so that 4 or 5 FTEs can in future be in charge, having developed over 10 years sufficient experience, of hiring external companies and have the supervision,

(e) From **FIPOI experience**, it turns out that:

(i) for the first 10 years upon delivery of the project, no capital replacement is considered necessary [this finding does not align with the information received by Brinks, which includes investment costs already after 5 and 7 years],

(ii) the lifetime of the building is considered 100 years, taking into account that there is a divergence between the theoretical period of useful life (50 years) and what in reality happens, as buildings are not dismissed unless necessary,

(iii) [this findings does not align with the assumption of Brinks that lifecycle of the building is 40 years]

[1] Previously issued as document CBF/25/9.

(iv) the benchmark adopted for capital replacement is 1% of the construction costs, i.e. 2 million per year, with a project value of 200 million,

(v) [this benchmark does not align with Brink's one, which is 1.5%]

(vi) while the benchmark window is between 1 and 1.4 %, the adoption of a 1% reference is based on experience, and is already very conservative. In fact, they would normally only need 0.8%, and consequently normally there is a surplus,

(vii) these values are calculated on the individual projects, and not balancing the whole portfolio (so that savings on one building would benefit additional costs for others). As a consequence, they would be applicable also on the scale of the PPP, without the benefits of a larger scale management (e.g. by RGD),

(viii) the model adopted by FIPOI (actual lifecycle of 100 years and 1% benchmark) brings a cost reduction of 30%-40%, compared with what would be if one had to outsource to a general contractor this strategy, as they would present figures based on the theoretical model and not on experience.

4. On the financing side, its was interesting what is happening in WTO, where MSs are pursuing a ZNG policy but in the next biennial budget it is proposed that the following resources be set aside for future capital replacement needs:

(a) savings on the construction project (15 mio), and

(b) surplus of the preceding biennium.

5. This is in addition to the CHF 1 million that Switzerland contributes every year for this purpose, as a result of the re-negotiation of the HQ Agreement.

II. Visit to Vienna on 28 March 2014

A. Visit

6. The visit was conducted to UNIDO, located within the Vienna International Centre - VIC, seat to UNIDO, IAEA, UNOV, and CTBTO.

7. The visiting team comprised the Project Manager (Peter Timmermans – Brink Groep), the Court (Sean Walsh) and the OC representative (Roberto Bellelli), and was received by the Chief of the **Buildings Management Service – BMS** (Arch. Teresa Garcia-Gill Cuéllar) and her staff.

B. The VIC

8. The VIC complex of buildings is the largest one among International Organizations, was built in the 1970', and its structural features are:

Ownership Austrian Ministry of Finance,

Gross floor area 380.000 sqm,

Office and conference area 180.000 sqm

Value (actualized) €1 billion (originally, $450 million)

Workplaces 4.500 staff + 2.500 visitors (delegates)

C. Facility Management model and resources.

9. BMS provides in-house maintenance services to all the complex (the 4 Organizations). While <u>most of the work is done in-house</u>, <u>external contractors are used for a list of services</u>, including lifts and escalators maintenance, cleaning, fire detectors, and waste management (see list at pages 15-16 of the presentation).

10. BMS has a staff of 80 (1 Director, 3 P, and the rest at GS level), against approved posts for 111 positions (1 Director, 5P, and 105 at GS level).

11. Joint procurement with other Organizations based in Vienna (e.g., OPEC and OSCE) has not been realised, as servicing the Organizations at VIC already poses significant policy challenges.

D. Maintenance and replacement Budget

12. Costs are shared between the 4 Organizations, based on a formula which takes into account the space assigned/used and the number of staff: changes in these two elements (regular scaling up/down of the Organizations) lead to yearly changes of the costs for each Organization.

13. The annual budget of approx. €30 million is broken down as follows:

(a) *Common buildings management:* €20.5 million (of which, utilities €6-7 mio; long term mainenance and replacement €7.5 mio; cleaning and other operational costs, incl. staff costs €5-6 mio). Any annual saving on this budget (surplus) is not returned to Member States but accumulated in a <u>Fund</u>, currently at the level of € 12-13 mio, and managed by the UNIDO Financial Unit;

(b) *Joint Buildings Management*: €1.0 million (for conference services);

(c) *Major Repairs and Replacements*: €3.5 million, out of a <u>Fund</u> which is financed 50% /50% (€1.75 mio) by the Organizations and the Host State. The amount of €3.5 is fixed for a theoretical 5 years, but is extended empirically to last 15 years. E.g., air conditioning system is included, but a split unit would not; lighting system to be replaced because of new technology to be adopted, but not if only a number of lights are changed.

A *Permanent Technical Working Group*, including the Host State, adopts recommendations every year, while the *Major Repair Joint Committee* adopts decisions;

(d) *Projects entirely financed by individual entities*: €5 million (funded by the Organizations, the Host State or others).

E. Contractual services outsourced

14. See list at pages 15-16 of the presentation. It was noted that outsourcing services should be done taking into account the need to maintain the ownership in the Organization, in order to ensure preventive and accurate maintenance.

F. Maintenance periods and useful lifetime of assets

15. There is no fixed period for the maintenance and/or replacement of assets: while the funding is provided on a multi-annual basis (biennial budget and amount of the Fund extended up to 15 years), <u>the management of the maintenance and capital replacement is on an annual basis</u>.

16. Extension of the useful lifetime of assets is common, with an accepted divergence between theoretical and actual periods: e.g., under Austrian law, air conditioning is to be replaced after 25 years, but this period is extended because of the lack of resources.

Annex VIII

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

1. The Court has carefully considered the "Comprehensive Recommendation" on the Total Cost of Ownership issued by the Chairman of the OC for consideration and decision by the OC. The Court is of the opinion that the comprehensive advice issued by the Working Group on Total Cost of Ownership (WGTCO) on 2 April 2015 and shared by the expert of the OC, represents the best solution for the Court’s permanent premises, as to the maintenance and capital replacement strategy in order to preserve the full functionality and value of its premises in the long run.

2. The WGTCO, chaired by the Project Director and composed of representatives of the Court and the Oversight Committee, including the Oversight Committee’s expert, met several times from April 2013 to March 2015 and was periodically attended by the external auditors. It discussed extensively the subject matter and decided on:

(a) *Organizational model*: maintenance and capital replacements outsourced to a main contractor (as opposed to in-house solution), with a lean Facility Management Unit in the Registry;

(b) *Funding Strategy*: financing of the maintenance programme through the regular budget of the Court and financing of the capital replacement programme through the establishment of a fund to be financed with flattened annual contributions would ensure smooth implementation. Alternative solutions, such as hybrid fund with lower contributions and credit facility were also considered viable;

(c) *Governance*: CBF and ASP; implementation audited by external auditors; and

(d) *Contributions to the Permanent Premises construction project’s costs by new States*: forward looking through the payment of the share into the fund to reduce the TCO cost for the existing States. However, this requires that the value of the building be preserved at the same level through the implementation of an appropriate programme of maintenance and capital replacement as per the WGTCO advice. However, the Court believes that introducing a mechanism for future States Parties to proportionally contribute to the permanent premises construction project’s costs could be a negative incentive for non-States Parties to join the ICC in the future, potentially affecting universality.

3. Based on the WGTCO conclusions and advice, the Court is concerned that the proposal made by the Chairman of the OC might entail serious risks in the long run for a sustainable maintenance and capital replacement programme for the Court’s premises. The Court would like the above to be put in the records.

Annex IX

Working Group on Total Cost of Ownership – Comprehensive Advice: how to organize and fund Capital Replacements[1]

I. Introduction

1. In 2015, the International Criminal Court ("the Court") will become the owner of the Permanent Premises and will have to deal with owner-related costs, known as the Total Cost of Ownership (TCO):

(a) Financial costs: costs based on having a loan (interest and amortisation);

(b) Maintenance costs: costs for both preventive and corrective maintenance and capital replacements; and

(c) Building operating costs: costs that relate directly to operating the building (not the organization) like insurance and energy costs.

2. In accordance with paragraph 8 of resolution ICC-ASP/11/Res.3, the Oversight Committee ("the OC") established in March 2013,[2] 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 contribute to the project costs.

3. The Working Group is chaired by the Project Director, and its voting members are the Project Director and representatives of the Court and of the Committee. Non-voting members include the Deputy Project Director, the Project Manager (Brink Groep) and the Independent Expert of the OC. Other interested States Parties, representatives of the Committee on Budget and Finance and the External Auditor can also attend the meetings of the Working Group.

4. The Working Group has held meetings on 17 April, 24 May, 5 July, 3 September and 15 October 2013, 15 January, 11 March, 9 April, 14 May, 24 September and 22 October 2014, and 9 and 24 March 2015.

II. Background

5. Since the beginning of its work in 2013, the Working Group has focussed its attention on how to organize maintenance and how to fund capital replacements in the new premises. Several options have been discussed.

6. The Working Group presented its Main conclusions, Summary and Recommendations, on 27 March 2014, which included the Main Contractor option as the most suitable organizational model, and a Fund based on flattened contributions by States Parties with an active, though risk-avoiding, treasury policy to cover for all capital replacement spikes. The Working Group recommended also that the one-year maintenance contract provided by Courtys after completion be extended one additional year to allow the Court's Facilities Management Unit (FMU) to get settled in the new premises and give the Court sufficient time to prepare for the new model.[3]

7. On 3 April 2014, the OC considered the advice of the Working Group and noted that its feasibility, in particular regarding funding, was doubtful due to the amount of resources that would be required from States since the first year of operation in order to flattening the spikes of capital replacements, and requested the Working Group to submit additional options.[4]

8. In particular, the OC requested that the Working Group to:

[1] Previously issued as document CBF/24/20
[2] Terms of Reference Working Group Total Cost of Ownership (TCO) dated 19th March 2013.
[3] Interim report on the activities of the Oversight Committee, paras. 57 to 68.
[4] Interim report on the activities of the Oversight Committee, paras. 69 to 71.

(a) Detail the multi-year cost implication projected for the useful lifetime of the premises and including an analysis of all related costs (e.g., maintenance at all levels, facility services, capital replacement, staff implications), with a clear distinction between categories of costs (e.g., maintenance and capital replacement) and disaggregated figures per each of the years in the period;

(b) Consider an hybrid funding mechanism, as well as alternative maintenance and governance models, including with appropriate transition periods if activities were to be outsourced; and

(c) Consider further the practice of other relevant International Organizations, including for the applicable lifetime periods, benchmarks, and level of maintenance.

9. Following the presentation by the Working Group of the financing and governance options for organizing capital replacements, on 30 March 2014, the Committee on Budget and Finance, at its twenty-second session, requested to be provided with[5] :

(a) Options for the “hybrid” financing of maintenance, meaning a frontloading of advance contributions for later major maintenance, given that the Court’s future facility needs were inheretently uncertain, depending on its activity level, which would vary, and could decline over time;

(b) An enquiry into the advantages and drawbacks of a loan facility for short-term bridge financing of unexpected maintenance or smoothing out cost peaks;

(c) More details about the suggested fund for maintenance costs; size and time profile of the fund; assumptions concerning types and risks of investment instruments to generate the anticipated returns of 2.29 and 4.50 per cent; cost of professional investment and risk management, be it in-house or through external know-how; size of flat annual contributions should investment yields fall short of the anticipated levels;

(d) An estimate of maintenance costs beyond the 30-year time frame underlying the Working Group’s advice;

(e) Clarification of the role of the Assembly and the Oversight Committee in the governance structure (setting the strategy, financial oversight and reporting lines).

10. On 2 October 2014, the Working Group presented a Progress Report addressing the OC and CBF requests to be provided with hybrid funding options, beyond the 30-year time frame, and taking into account experiences from other governmental and intergovernmental organizations.

11. The Working Group reiterated its opinion that the Main contractor model would be the preferable approach for organizing maintenance. Regarding funding, the Working Group came to the conclusion that a fund structure would be the best possible option for flattening spikes over the years, and presented four different variants of a New Basic Scenario, including a hybrid fund, in order to take account of previous remarks by the OC and the CBF.[6]

12. At its thirteenth meeting of 2014, on 13 November 2014, the OC considered that the technical options based on a multiannual approach for the management and funding of the Total Cost of Ownership appeared to present political challenges. Therefore, the OC believed that it was appropriate that the Working Group consider also an annual approach, which would better address political challenges, while further refining the technical options.

13. The OC decided that the Working Group should complete its work early in 2015, by exploring two alternative solutions taking into account, respectively, a multiannual approach which would foster a technical perspective, and an annual approach that could address potential political challenges arising under the first scenario.

14. The present report is based on the previous work of the Working Group and the presentation made by the Project Manager at the meetings of the Working Group held on 9

[5] Report CBF 22, paragraph 100.
[6] Progress Report of the Working Group on TCO, dated 29 October 2014.

and 24 March 2015 addressing the issues raised by the CBF and the OC, which was presented also to the OC on 27 March 2015.[7]

15. At the request of the OC, two options have been considered:

(a) Technical solution: Main Contractor in combination with hybrid fund; and

(b) Proposal based on a draft Discussion paper on TCO, dated 5 November 2014: In-house or Main Contractor solution in combination with annual funding.

III. Scope of the advice: Maintenance strategy

16. The Working Group on Total Cost of Ownership ("the Working Group") has found that all elements in the TCO show a flat cost pattern through the years (taking into account the normal indexation), except capital replacements (see appendix I).

17. Therefore, the scope of the issue is:

(a) *Organizational model*: how to organize the maintenance of the Permanent Premises, i.e., preventive and corrective maintenance (including the necessary inspections and certifications) and capital replacements. The two alternatives are: selecting a Main Contractor or organizing maintenance in-house;

(b) *Funding strategy*: how States Parties can fund capital replacements. This can be done following a multiannual approach using a Fund (with flat contributions, or following a hybrid model), or annually.

These options have been assessed on two different elements:

(a) Technical feasibility; and

(b) Financial feasibility.

18. In addition, and in line with the requests of the OC and the CBF, the Working Group has considered the **governance** arrangements needed to deal with capital replacements.

19. Finally, the OC requested the Court to provide a possible technical solution for the **contributions of new States Parties to the cost of the Permanent Premises Project**.

IV. Assumptions

20. Two decisions have already been made concerning: a) the extension of Courtys maintenance contract and b) Maintenance condition score, including life cycle approach, depreciation times, indexes, etc. Also, for the purpose of calculating capital replacements, the cost of maintenance has been kept separate, as explained below under c) Maintenance (corrective and preventive) and Capital Replacements.

A. Extension of Courtys maintenance contract

21. Upon positive consideration by the CBF and the OC, the Assembly authorized the extension at market rates of the one-year maintenance contract to be provided by Courtys (as from the Completion Date) until 31 December 2017. The purpose of this extension is to avoid overstretching the Court and the PDO at a critical time in the completion of the transition to the new premises and also to enable a more cautious settlement of the model to be adopted for the Total Cost of Ownership.

B. Condition score

22. After extensive discussion, the Working Group came to the conclusion that the right level of maintenance for the Permanent premises would be a combination of Condition Score 2 (for the Court Room tower and some common areas as being the most

[7] Comprehensive advice: how to organize and fund capital replacements (Version 7.0), Working Group on TCO, 25 March 2015.

representative spaces in the new premises) and Condition Score 3 for the rest of the premises (office wings, warehouse). This solution is supported by the maintenance strategy for Dutch Governmental Buildings which is set at condition score 3. Conditions scores are further detailed in the report of the Working Group dated 29 October 2014.

23. The Working Group agrees with the OC's recommendation that the Court maintain a condition score between 2 and 3 at the lowest possible cost and keep it under review in order to achieve a more favourable balance, if possible.

24. All calculations for maintenance costs and capital replacements in this document are based on said combination of Condition Scores 2 and 3.

C. Maintenance (corrective and preventive) and Capital Replacements

25. Although capital replacements are strictly interrelated with preventive and corrective maintenance, their respective budgets can be kept separate.

26. While capital replacements will follow, according to the current estimates, the schedule described in appendix I, corrective and preventive maintenance costs in the new premises are estimated at €1.5 million per year as from 2018. This amount is considered to be sufficient to guarantee a proper maintenance of the new premises provided that a suitable programme of capital replacements is implemented, and it includes a small contingency for unforeseen circumstances such as legislation changes.

27. In the permanent premises the Court, being the owner and the user of the building, will be dealing with both owner related maintenance and user related maintenance costs. The owner related maintenance concerns all assets which are normally paid for by the rent (façade, installations, etc.). The user related maintenance concerns all assets that the Court purchases itself and are removable from the building (Court Room installations, furniture, etc.).

28. In the interim premises, the Court also pays for both types of maintenance but the owner related maintenance is organized by the landlord (Major Programme V) and the user related maintenance is organised by the Court itself (budget Facilities Management Unit, FMU, Major Programme III). The scope of maintenance is comparable between the Interim Premises and the Permanent Premises. Although the Permanent Premises have more floor area and a landscape to maintain, the expected annual maintenance costs are lower mainly due to the design of the building. A comparison of costs is provided in appendix II.

V. Organizational model

29. The Working Group TCO in its advice dated 27 March 2014 strongly recommended to opt for the main contractor model. This has been extensively justified and documented in the previous reports prepared by the Working Group.

30. The OC Discussion paper on TCO, dated 5 November 2014, requested the Working Group to consider the possibility of "a transitional period between Courtys and management by in-house resources while examining the possibility of external General contractor after a period of [10] years".

31. The Working Group notes that due to the rental situation of the Interim Premises, the Court to a large extent has been operating as a demand manager towards the RVB/Landlord with no need for specific expertise on the maintenance of the building. This organization is suitable for the Main Contractor model with some adjustments.

32. The Working Group further notes that the extension of Courtys maintenance contract until the end of 2017 to give FMU sufficient time to be able and prepare for the tender of the main contract, is also in line with the current FMU organization, and the Main Contractor model.

33. From an organizational and economic point of view, it would make little sense for the Court to go from working as a demand organization with its current landlord, the RVB, and with Courtys until the end of 2017, and then change to an in-house management structure during a transition period, only to decide eventually to return to the Main

Contractor model. In order to implement an in-house solution, even for a limited number of years, the FMU organization would need to undergo a costly and functional organizational change.

34. The Working Group therefore believes that it would not be a cost-efficient solution to change the organizational model or to extend unnecessarily the transition period in order to examine the possibility of an external general contractor.

35. The Working Group has re-examined the Main Contractor solution thoroughly and objectified its conclusion with the Public Private Comparator method by using both qualitative and quantitative parameters.

36. From a qualitative point of view, the in-house solution is evaluated to be less positive than the Main Contractor model. Although the in-house solutions has more flexibility in it, especially on the aspects of risk transfer and the possibility to expand the scope of the contractor [8], the in-house solution is not favourable since the Court would manage itself the risk of maintenance, which it is not prepared to do at the moment.

37. Regarding the qualitative criteria that influence the cost of maintenance, the in-house solution is also estimated to be less cost efficient; the internal ICC organization would need to grow to deal with all kind of tactical activities, and it would never take advantage of the position of a Main Contractor in the market.

38. Furthermore, it is a rule of thumb that an organization needs more than 100,000 m2[9] to afford to build up an experienced, up-to-date organization to deal with the owner related operational aspects of maintenance and capital replacements. The ICC does not have the size to do develop in this direction with efficiency.

39. Overall, the in-house solution is estimated to be €15 million less cost efficient over a period of 30 years, i.e., an average of €0,5 million per year in a conservative estimate (see appendix III).

40. The Working Group considers that all necessary information is available for the OC and ASP to make a decision on the desired organizational model and that it would not be in the best interest of the organization to delay this decision further.

A. Advice

(a) **The Working group TCO recommends that the Court implement the Main Contractor solution as its main strategy to deal with maintenance and capital replacements based on 10–year Multi-year Maintenance Programmes:**

   (i) **The Main contractor solution is at least €0.5 less expensive per year than the in-house solution; and**

   (ii) **More effective, efficient and less risky solution for the Court as maintenance and capital replacements, strictly inter-connected, are managed together by the main contractor while monitored by the Court.**

(b) **The Working Group advises to implement a transition period, as currently planned, until December 2017 according to the following steps:**

   (i) **Develop and train the FMU organization in 2016 and 2017 in accordance with the Business plan being designed; and**

   (ii) **Design and implement the procurement of the main contract in mid 2017, so that the Main Contractor is ready to start its activities on 1 January 2018.**

[8] This is so because the in-house solution means contracting with multiple maintenance companies (i.e. risk transfer through multiple parties) instead of a main contractor that is responsible for running and controlling the work delivered. As such, the in-house solution has a high cost from the perspective of contract management related to the risk of maintenance.
[9] Prof ir H. de Jonge, Technical University of Delft, the Netherlands.

(c) **An open book target contract is recommended with the Main Contractor for preventive and corrective maintenance, as well as for capital replacements in order to maximize cost effectiveness and stimulate collaboration.**[10]

VI. Funding strategy

41. **Option (a) full fund with flattened annual contributions**. The Working Group recommended, in its advice, dated 27 March 2014, that the Court set up a Fund with flattened annual contributions from States Parties with an approved defensive investment yield of at least %2.29% to finance all capital replacements during 30 years.

42. Following the comments received from the OC and the CBF, the Working Group presented, its progress report dated 29 October 2014 detailing several options, over a period of 50 years, including variants with a hybrid fund, with no contributions from States Parties during the first five years of moving to the new premises, and with a risk-aversive yield of 0%.

43. Upon reviewing these variants, the OC indicated that it would prefer not to commit into large-scale funds, which are outside of States parties' control and potentially exposed to risks stemming from management and financial markets in the Discussion paper on TCO, dated 5 November 2015. The OC requested that the Working Group explore two alternative solutions which take into account, respectively, a multiannual approach which would foster a technical perspective, and an annual approach that could address political challenges that might arise under the first scenario.

44. The Working Group has examined two further options, in its meetings on 9 and 24 March 2015;

(a) Technical solution: hybrid fund; and

(b) Proposal based on a draft Discussion paper on TCO, dated 5 November 2014: annual funding, with or without a [€10 million] last resort reserve.

45. As indicated above, corrective and preventive maintenance costs have been separated from capital replacements, and are estimated at €1.5 million per year to be funded through the Court's annual budget. This is equivalent to user and owner maintenance costs borne by States Parties in the Interim Premises, and shows the higher efficiency of the new premises, which occupy 10,000 m2 more than the current premises.

46. The Working Group still considers, in accordance with its previous advice dated 27 March 2014, that it is the sounder solution to fund capital replacements in the Court's new premises through a full fund. This is reflected in the option included as "Fund" in the presentation dated 26 March 2015 (slides 20, 21, 22). The Working Group is of the opinion that a minimum yield of 1%, if not higher, could be obtained with a risk aversive policy for a Fund of this duration and amount.

47. **Option (b) hybrid fund**. Should a full fund not be possible, alternatively, the Working Group proposes that States Parties contribute each year €2.5 million (indexed with 2% each year). This has the advantage for States Parties that they would recognize in the budget the same amount that they currently pay for rent in the Court's regular budget (after host State subsidy is applied). This is reflected in the option included as " Hybrid Fund" in the presentation dated 26 March 2015 (slides 23, 24, 25).

48. Such a Hybrid Fund would cover all capital replacements, except for three spikes in or around the years 2041, 2051, and 2056, which would influence significantly the Court's annual budgetary process in those years. For all other years, maintenance and capital replacements would not cause the Court's budget to fluctuate and, therefore, would not affect the Court's budgetary process.

49. At this moment, following the OC's request, the figures have been calculated as if there would be a minimum Return on Investment in the fund of 1%. However, any yield of the fund above that figure would immediately have the effect of reducing the cost of capital replacements for States Parties. Should a medium or long-term investment policy be

[10] See the Working Group's Main conclusions, Summary and Recommendations, dated 27 March 2014.

recommended by the CBF and approved by the ASP, it could also be applied to the Capital Replacement Fund.

50. An annual approval process would be in place, according to the normal procedures, for the derived annual programmes before the main contractor can execute on the maintenance and use the resources of the established fund.

51. Use of resources in the Fund would be in accordance with the Annual Maintenance Plans, based on Multi-year maintenance Plans agreed upon with a Main Contractor. The Court would make the resources available in the fund to the Main Contractor in accordance with the contract and the rules established by the ASP.

52. Under **Option (c) Annual budget** there would be no Hybrid Fund and no yield. As a consequence, capital replacement would create 14 spikes in the next 50 years, according to the current estimates, some of them very significant, i.e. up to €95 million. The Court's regular budget would fluctuate 14 times making the budgetary process much more complicated. A decision on maintenance funds would be needed 14 times, which would create a risk for the quality and the execution in time of the maintenance programme. This risk would be much higher under the In-house solution. Finally, any maintenance savings or unused allocation of resources would not be carried on to the following budgetary year. This is reflected in the option included as "Annual Budget" in the presentation dated 26 March 2015 (slides 18, 19).

53. In conclusion, the annual budget solution, would multiply the risk of States Parties not being able to pay their assessed contribution for capital replacements on time, especially in those years where major disbursements would be needed (i.e., in the current forecast, year 2036, €50 million, or year 2041, €72 million, and 2056, €95 million).

A. Last resort Reserve

54. The OC has requested the WG TCO to consider "the establishment of a **last resort reserve** with a risk-averse investment model (the Working Group has calculated with a1% yield) of up to [10] Mio Euro for unforeseen and unavoidable maintenance events, with usage subject to approval by a management body, to be ready after [10] years." This is reflected in the option included as "Hybrid Fund - Capped" in the presentation dated 26 March 2015 (slides 25, 26, 27).

55. In the Working Group's view there should be, in principle, no "unforeseen and unavoidable maintenance events" relating to Capital Replacements occurring if proper preventive and corrective maintenance is undertaken. However, a last resort reserve, as suggested by OC members, could function as a more modest version (capped at €10 million) of the hybrid fund envisaged under Option b).

B. Loan facility

56. Under both Option b) and c), very significant spikes will need to be financed by States Parties according to the Programme of capital replacements. These spikes are much more numerous and important in Option c) and create a risk that necessary investments will not be made when needed.

57. In this regard, the CBF has requested the Working Group TCO to conduct "an enquiry into the advantages and drawbacks of a loan facility for short-term bridge financing of unexpected maintenance or smoothing out cost peaks".

58. As stated above, no unexpected maintenance needs requiring a last-minute significant investment in maintenance and/or capital replacements should occur if a proper planning and preventive and corrective maintenance programme is implemented by the Court.

59. However, the Working Group concurs with the CBF that a loan facility could be useful in order to smoothing out peaks in capital replacements, in particular under Option c), thus eliminating the risk of States not being able to pay their contributions for capital replacements on time.

60. If a loan facility would be established, the Court would borrow from the loan facility and States Parties would be assessed in the Court's annual budget according to the applicable Scale of Assessment. Should new States join the Court, they would participate in the repayment of the loan as of the date or their becoming Parties.

61. The drawbacks of such a loan facility would be that States Parties would have to pay interest and that a loan requires some internal management arrangements on the part of the Court.

C. Advice

On the premise that the Court should preserve the full functionality and value of the investment made by States in its own premises through the timely implementation of a maintenance and capital replacements programme:

(a) **The Working Group recommends that a Fund be set up to finance all capital replacements in the new premises as the best solution from a technical perspective. In the Working Group's view, the Fund should cover all capital replacements with flattened annual contributions over a period of 50 years, in accordance with its advice dated 27 March 2014. The most cost-effective,**[11] **risk-aversive and lowest cost solution to States Parties over 50 years would be option a). An investment yield for such a fund should be set at a minimum of matching inflation, if not better; and**

(b) **In either Option (b) and (c), the Working Group is of the opinion that establishing a loan facility to cover major spikes in capital replacements would partially diminish the risk that necessary replacements would not be made on time with negative impact for the Court's activities. In order for the hybrid fund to cover the small spikes, yearly contributions of €2.5 million (indexed at 2%) would be needed, while the largest spikes would still require significant additional funding. As such, the hybrid models b) and c) relate financially to the current contributions States Parties make in the Interim Premises, although additional funding would be needed.**

VII. Governance

62. The Committee on Budget and Finance, at its twenty-second session, requested to be provided with a 'Clarification of the role of the Assembly and the Oversight Committee in the governance structure (setting the strategy, financial oversight and reporting lines)" in connection with maintenance and capital replacements in the permanent premises.

63. The OC requested the Working Group to examine options for a governance mechanism that would enable the Assembly of States Parties ("the ASP") to play an active and engaged role in the maintenance of the Permanent Premises and the use of a contingency reserve, including through appropriate representation in a management body, independent consultancy, and final authority in decision-making.

A. General Programme of capital replacements over 50 years

64. This is the starting point calculation upon which all other arrangements (multi-year plans, yearly contributions by States, Fund or reserve, loan, spikes, etc.) are based (see appendix I).[12]

65. The General Programme prepared by the Project Management has been confirmed by the TCO Expert of the OC based on current information on replacement times and values.

66. This is based on the only assumptions possible at the moment: that the ICC is an institution which is, in principle, destined to last for a long period of time, and that the

[11] Option (a) would result in a total cost over 50 years of €279 million (assuming a 1% yield), as opposed to €304 million for Option c).

[12] Always keeping in mind that capital replacements and corrective and preventive maintenance are interrelated.

building is to be kept functional and maintained at the level required to ensure that the Court can discharge its mandate and that the value of the asset is suitably protected.

67. The ASP could "take note" of the 50-year General Programme of capital replacements preferably in ASP15 (end of 2016) or ASP16 (end of 2017), upon the advice of the CBF. This would be very useful in order to convey to States Parties the message that owning the premises and preserving their full functionality and value of the investment made has a cost for the Court, which substitutes the payment of rent.

68. The General Programme would be revised approximately every 10 years, at the time of the preparation of each Multi-year plan. The Programme could be affected at the time of each Multi-year revision by issues such as technical innovations extending the life span or lowering the replacement value of assets, changes in the way work is carried out in the Court, etc. Other major game changers would be a decision by the ASP to sell the building and pay rent, or the Court terminating its activities.

B. Multi-year plans (every 10 years approximately)

69. For management purposes, the General Programme of capital replacements needs to be broken down and translated into a series of operational Multi-year plans approximately every 10 years, whether they are called "**Multi-Year Maintenance Programme**" in Option (b), or "**Mid-term procurement plan**" in Option (c).

70. The CBF has already requested the Court in the past to produce a multiannual budget forecast, e.g., precisely in the area of capital investments for the Permanent Premises.

71. The approval of every 10-year Multi-year maintenance plan, providing the basis for the selection of and the contract with the Main Contractor, is the most important step in organizing maintenance and capital replacements in the permanent premises as the contract with the Main Contractor, based on the Multi-year plan, would create multi-year obligations for the Court.

72. From the point of view of **governance**, the drafting, procuring and managing of Multi-year Plans could be accommodated within the current governance framework of the Court:

(a) Multi-year plans would be prepared by the Court's competent services (GSS, BFS, etc.)

(b) [Revised by a Group of Experts];

(c) Reviewed and assessed by the CBF; and

(d) Approved by the ASP;

(e) Implementation audited by an External Auditor.

C. Annual plans / annual costs

73. Under any of the options, Multi-year plans will be broken down into Annual plans. Corrective and preventive maintenance, estimated at €1.5 million per year at 2018 prices, would always be financed through the Court's annual budget, while Capital replacements would be financed through one or several of the following possibilities: a Fund/Reserve, the Court's annual budget, and/or a loan facility.

74. The **governance** arrangements would be similar to those considered previously:

(a) The Annual Maintenance Programme, based on a yearly update of the Multi-Year Maintenance Programme, would be proposed by the Main Contractor and subject to review by the Court's competent services (GSS, BFS, etc.);

(b) In the absence of a Main Contractor, the Court would prepare every year's budget based on the Multi-year procurement plan;

(c) Assessed by the CBF; and

(d) The ASP would approve the annual maintenance costs (including capital replacements) against the previously approved 10-year maintenance plan.

75. Under the Main Contractor solution, Annual plans would follow approved Multi-year Maintenance Programme, with some flexibility within the general conditions and obligations of the target contract with the Main Contractor.

76. On the other hand, the in-house solution (no Mid-term obligation with a Main Contractor and no fund) would result in a yearly new budget discussion about maintenance, and a separate decision-making process for each one of the spikes of capital replacements (the maximum one being €95.4 million). This would make the risk very high that necessary decisions would be delayed for political reasons and the operations of the Court endangered. Also, a very large part of the Court's and ASP's activity would be devoted to discussions on maintenance and capital replacements.

D. Role of the Assembly of States Parties

77. The ASP would always be the final authority approving all expenditures relating to capital replacement and maintenance, upon the usual CBF advice.

78. The Assembly would not need to approve the 50- year General Programme of Capital Replacements, which would be kept under constant review.

79. The ASP should approve the Multi-year plans every 10 years approximately. This would be a particularly important exercise as multi-year plans would provide the basis for the contract with the Main contractor, creating obligations for the Court over the duration of the maintenance contract. All measures should be taken so that States Parties are satisfied that Multi-year plans are reasonable, both technically and economically, and adjusted to the needs of the Court.

80. Every year, the ASP would approve, through the normal budget discussions, any variations proposed by the Contractor or the Court to the annual expenditures in maintenance and capital replacements against the approved multi-year plan.

81. The role of the ASP in connection with the TCO requires that a decision is taken on this matter at ASP 14 in November 2015. This will be necessary to enable the general maintenance contractor to be effectively and efficiently procured.

82. There would be no need for a permanent body for the day-to-day management of maintenance activities, which are technical in nature, and would be managed by the new FMU organization in accordance with Multi-year plans. A permanent management body with the presence of States Parties would also presumably add little value since the field of expertise of delegates is usually not related to property management.

83. In summary, it is understandable that States Parties would want to make sure that their resources are used in a sound manner. This can be achieved with strict control every 10 years (approximately) at the time of approval of each Multi-year plan, in combination with the normal budgetary procedures for every annual budget of the Court.

84. On the other hand, States Parties should not waste time discussing capital replacements instead of, for instance, Cooperation and Complementarity. The situation should be avoided in which the Registry, States Parties and the ASP would spend most of their time discussing whether air ducts should be replaced, in what year, at what cost, or what is the performance rate of each one of the maintenance subcontractors, etc.

85. A specialized External Auditor, such as the existing one for the Permanent Premises Project, should assess annually the implementation of Annual plans and their conformity to the approved Mid-year plans.

E. Advice

(a) **The Court's current governance structure is suitable for the management of the Total Cost of Ownership with very few minor adjustments; see appendix IV.**

(b) **A decision is required on this matter at ASP 14 in November 2015. This will be necessary to enable the general maintenance contractor to be effectively and efficiently procured.**

(c) **A permanent management body with the presence of States Parties is not needed nor envisaged. Capital replacements and maintenance can be managed on a daily basis by the new FMU organization.**

(d) **In case of the setting up of a capital replacement fund or a last resort reserve, it would be governed by the Court's Financial Regulations and Rules, subject to the same controls than other funds and reported on through the CBF and the ASP each year.**

VIII. Contribution of new States Parties to the Construction Project

86. In accordance with paragraph 8 of ASP/11/Res.3, the Working Group will advise the Oversight Committee by doing a technical evaluation of possible options on funding facility and maintenance costs, including for future States Parties to contribute to the project costs.

87. Following this request, the Working Group received and examined, at his meeting on 9 March 2015, a paper prepared by the Court including technical options available within the current Financial Regulations and Rules framework and taking into consideration similar practices in place for other International Organisations. Unfortunately, the number of International Organisations owning a building which has not been donated is limited. At the same time, none of the Organisations which have built their premises opted for a combination of one-time payment and loan to finance the project.

88. It has to be noted that the Financial Regulations and Rules (FRR) of the Court require that a new State Party (SP) is assessed for a share in the Court's Working Capital Fund (WCF) only, which is consistent with the FRR of other UN system organisations. This is applied returning funds to the other SPs without increasing the level of the WCF.

89. At its meeting on 24 March 2015, the Working Group considered a simpler option from a technical point of view. Given the complexity of administering the technical options available in presence of a mixed financing system, which would require reassessing the one-time payments made by States in the past as well as the loan repayment calculations every time a new SP joins, the Working Group has concluded that the best solution would be to have the contribution of the new SP paid into the Fund created to finance the TCO. This forward looking approach will have the benefit of being simple and forward looking and will reduce the residual amount of TCO still to be paid.

90. The contribution to be paid by a new SP would be calculated assessing the final cost of the new premises by using the new scales of assessment after the SP has joined. The rationale behind this approach would be the following: the value of the building is kept at the construction cost level by means of the implementation of the TCO programme throughout the life of the new premises, therefore future States Parties will pay their share of the original building value as they join the ICC in the future.

91. The Court believes that introducing a mechanism for future SPs to proportionally contribute to the Permanent Premises construction project's cost is a decision for States Parties. However, it considers this one off cost could be a negative incentive for non-States Parties to join the ICC in the future, potentially affecting universality.

Appendix I

Schedule Capital Replacements

Year		Capital Replace-ments
2015		0
2016	1	0
2017	2	0
2018	3	0
2019	4	0
2020	5	0
2021	6	1.025.954
2022	7	0
2023	8	0
2024	9	4.217.241
2025	10	0
2026	11	1.172.141
2027	12	0
2028	13	0
2029	14	0
2030	15	0
2031	16	1.339.159
2032	17	5.219.056
2033	18	0
2034	19	0
2035	20	0
2036	21	50.191.215
2037	22	0
2038	23	0
2039	24	0
2040	25	6.458.855
2041	26	72.037.649
2042	27	0
2043	28	0
2044	29	0
2045	30	0
2046	31	1.997.049
2047	32	0
2048	33	7.993.171
2049	34	0
2050	35	0
2051	36	41.801.409
2052	37	0
2053	38	0
2054	39	0
2055	40	0
2056	41	95.405.840
2057	42	0
2058	43	0
2059	44	0
2060	45	0
2061	46	2.978.142
2062	47	0
2063	48	0
2064	49	12.241.826
2065	50	0

Appendix II

Corrective and preventive maintenance in interim premises and permanent premises

	Interim Premises			Permanent Premises	
	44000 m2			54000 m2	
	2014	2018		2018	
		index 2% per year		Main Contractor	In-house
Maintenance owner related	€ 900.000	€ 974.189		€ 1.476.721	€ 1.476.721
Maintenance user related	€ 697.236	€ 754.711		included	included
total	€ 1.597.236	€ 1.728.900		€ 1.476.721	€ 1.476.721
			delta	€ -252.179	€ -252.179

N.B.: The advantages due to the organisational model (main contractor versus in-house) are not projected on these figures. These additional advantages are estimated at €0.5 million per year.

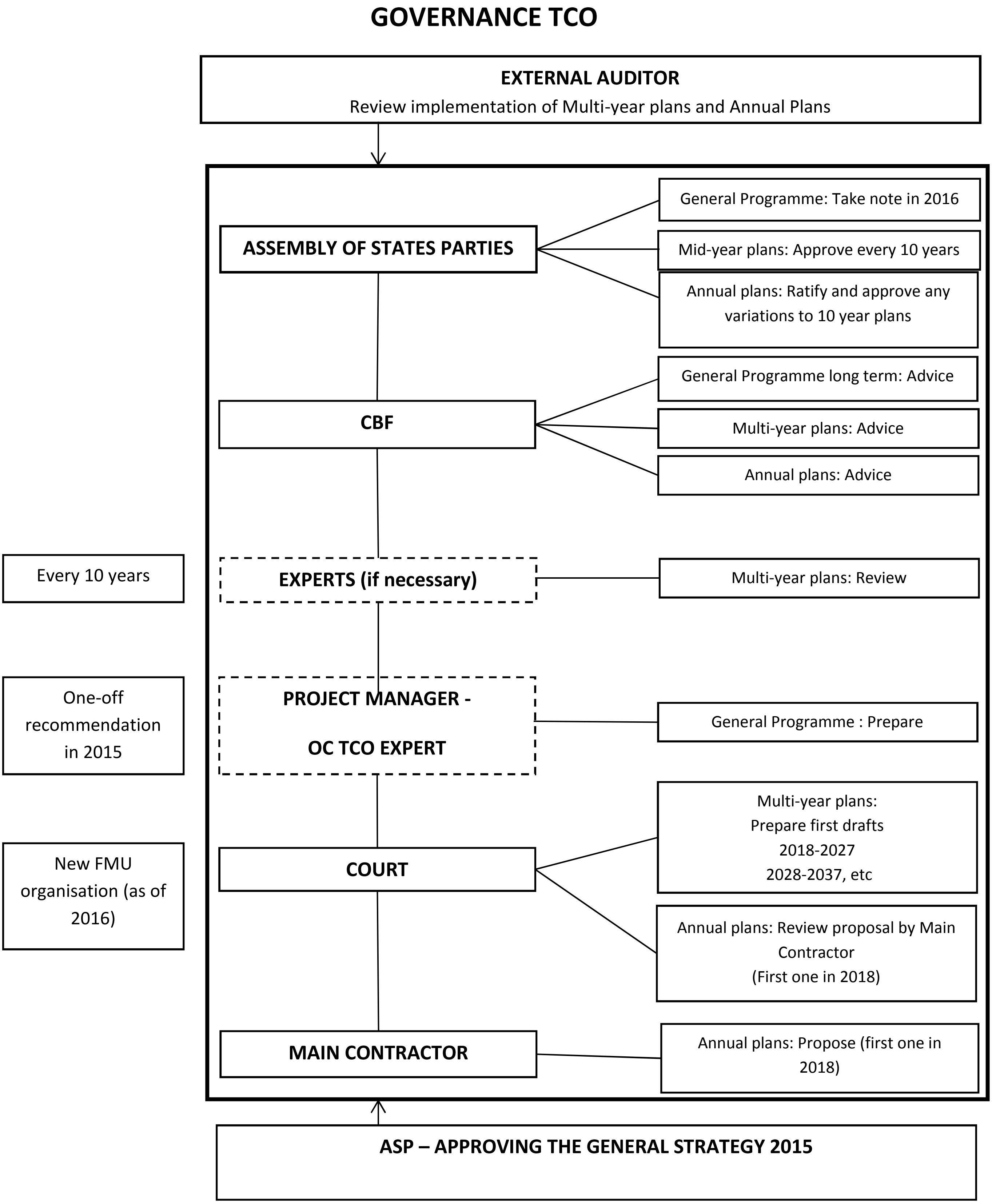
Appendix III

Financial feasibility; main contractor and in-house models

	Interim Premises	*Permanent Premises: Main Contractor*		*PP: In-house*
Staff costs (internal organization costs) 2018	€ 1.340.158	€ 1.514.398		€ 1.791.598
	15 FTE	17FTE		20FTE
Core business main contractor		€ -197.508		
- work optimization		€ -73.836	5%	
- economies of scale		€ -118.138	8%	
- life cycle approach		€ -29.534	2%	
- overhead		€ 24.000	10%	
	€ 1.340.158	€ 1.316.890		€ 1.791.598

NB: Other cost related to the operations of the Court in the Permanent Premises will be dealt with in the budget cycle. These are not relevant for decision making on the Organisational model. The difference between the Interim Premises and the Permanent Premises is due to economies of scale and the number of buildings.

Appendix IV


GOVERNANCE TCO
EXTERNAL AUDITOR
Review implementation of Multi-year plans and Annual Plans
ASSEMBLY OF STATES PARTIES
General Programme: Take note in 2016
Mid-year plans: Approve every 10 years
Annual plans: Ratify and approve any variations to 10 year plans
CBF
General Programme long term: Advice
Multi-year plans: Advice
Annual plans: Advice
Every 10 years
EXPERTS (if necessary)
Multi-year plans: Review
One-off recommendation in 2015
PROJECT MANAGER - OC TCO EXPERT
General Programme : Prepare
Multi-year plans: Prepare first drafts 2018-2027 2028-2037, etc
New FMU organisation (as of 2016)
COURT
Annual plans: Review proposal by Main Contractor (First one in 2018)
MAIN CONTRACTOR
Annual plans: Propose (first one in 2018)
ASP – APPROVING THE GENERAL STRATEGY 2015

Annex X

Comparison costs Interim and Permanent Premises

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

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

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

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

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