



Fifteenth ICC-ASP Bureau Meeting

20 October 2011

Agenda and Decisions

The President of the Assembly, H.E. Mr. Christian Wenaweser (Liechtenstein), chaired the meeting, which was held in The Hague

1. Premises

a) Interim premises purchasing option

Regarding the interim premises purchasing option (IPPO), the President expressed appreciation for the efforts undertaken by the facilitators, Australia, Germany and Nigeria, who had submitted the final report on the possible option to purchase the Arc building, dated 27 September 2011.

It was highlighted that the discussions on the IPPO had raised many concerns as a significant amount of financial resources had already been invested in the permanent premises project. There was a general view that the IPPO scenario included many difficulties and risks, and after having analyzed the information provided by the external expert Twinstra Gudde, which did find some savings, it was still unclear whether States Parties should opt for the IPPO scenario.

The point was made that the aim of the analysis was to ensure that States Parties would not only receive the least expensive premises but the best quality for the money invested as well. Several points as to why the IPPO would not constitute a viable alternative to the permanent premises option, included:

- (i) When taking into account the exploitation costs (initial costs) and the net present value costs (realize options of a 25 year cycle), the IPPO did not amount to significant savings, particularly as the Oversight Committee was continuing to find ways of reducing the costs of the permanent premises beyond the estimates made in the first semester;
- (ii) The IPPO would not constitute savings for States Parties as they would have to enter into a commercial loan and would therefore be subject to risks of the commercial market, such as interest rates;

- (iii) The Court would have to continue to rent additional premises. Even with the addition of the B-wing of the Arc building (currently occupied by Eurojust), there would still not be sufficient space. As result, States Parties would need to continue paying rent for other premises;
- (iv) If renovations were to be made, it would still take longer to have fully available and operational premises than the move to permanent premises.
- (v) As indicated in chapter five of the feasibility report, it was clear that functionality and security would fall short should States Parties opt for the IPPO.

Even though there was an agreement in principle to no longer pursue consideration of the IPPO, consensus could not be attained as the point was made that the original decision regarding permanent premises had been taken by the Assembly of States Parties and as significant developments had already taken place, the full Assembly was the only proper body to decide, as opposed to the limited number of States Parties represented in the Bureau.

A view was expressed that reassurance should be sought that the additional costs of the lease for the interim premises to be incurred by the Assembly in the coming years should not negatively affect the Court's operations and that, in this connection, such interim premises rental costs should not be included within the zero growth budget ceiling that some delegations have mentioned as an option.

However, the point was also made that, unless otherwise decided by the Assembly, the original decision on permanent premises was still standing and so were the obligations of all States Parties, including the host State. Furthermore, as regards the permanent premises, there was still room not only for additional savings to be attained, including via additional reductions of the Court's requirements; in this connection, the Court and the Oversight Committee were urged to continue identifying further reductions.

Some concern was expressed vis-à-vis what would appear to be the host State limiting its commitment to the ambit of the Ministry of Foreign Affairs, whereas the expectation of States Parties would be for renewed commitment to the permanent premises project from the host State per se, including for example the municipality of The Hague. Appreciation was expressed for the 29 September 2011 public commitment by the host State to fully bear the costs for restoring the interim premises.

For its part, the host State emphasized that the housing for the Court should be as adequate and economic as possible. From a merely financial point of view, buying the Arc building might seem more attractive; however, as already pointed out, such an option was risky as well. Furthermore, the host State indicated that the preparations for the site of the permanent premises to be handed over to the Court would also be re-started once the IPPO was no longer pursued.

There was general agreement that the clearing and preparation of the site was not contingent upon the decision of the IPPO and Bureau members thus urged the host State to begin the work on the clearing of the site. The host State was also requested to inform the Bureau of the date of completion of the preparation of the site.

The representative of the host State restated that, as indicated in the 14 October 2011 letter, if the IPPO was to be chosen, the host State would claim compensation for the financial resources already invested in the Alexanderkazerne site; she expressed hope to continue the

permanent premises work and indicated that a the timetable for the preparation of the site would be provided once the Bureau had made a definitive decision to no longer pursue the IPPO.

As regards the rental costs of the interim premises, she informed the Bureau that, in order to facilitate the decision taking on interim lease, contingent upon a decision of the Bureau to no longer pursue the IPPO, the host State was willing to broaden the scope of the subsidized loan, as well as to assume the responsibility for the costs of the interim lease until the end of 2012, which would be six more months beyond what was foreseen. The Government of the Netherlands would formalize this offer, which would be communicated to the Court via a formal letter. Members of the Bureau welcomed this offer and requested the host State to extend the offer beyond 2012. The Court would thus assume the responsibility for the rent as of 1 January 2013.

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Since no agreement was reached on the IPPO option, the President called for an informal discussion with a view to taking a final decision at the 1 November meeting of the Bureau. States with queries on the IPPO were requested to convey them to the facilitators, who would then share them with Bureau members.

b) Negotiations on the extension of the lease for interim premises

Bearing in mind that the negotiations concerning the extension of the lease of the interim premises, the Bureau decided to extend the mandate of the facilitators to mid-November.

2. Other matters

As regards the two nominations for the seat allocated to the African Group in the Committee on Budget and Finance, the President called upon the members of the group to consult with a view to having a consensus candidate.
