

**Assembly of States Parties**Distr.: General
30 October 2013

Original: English

Twelfth session

The Hague, 20-28 November 2013

**Report of the Court on its current lease agreements
for the interim premises*****I. Introduction**

1. It is currently envisaged that the Court will have moved into its new permanent premises, by the end of December 2015. At the twentieth session of the Committee on Budget and Finance (“the Committee”), held in April 2013, the Oversight Committee noted that the lease contracts for the Arc building, which the International Criminal Court (“the Court”) currently occupied, had recently been renewed until the end of March 2016. The Oversight Committee further noted that there was a risk that the Court would still have to pay rent even after it had vacated its current interim premises, although some flexibility in case of unexpected delays could be convenient. Negotiations with the owner of the interim premises of the Court should be resumed with a view to including a flexibility clause in the contract, in order to allow for an earlier (or later) termination date as necessary.¹

2. The Committee invited the Oversight Committee and the Court to seek an understanding on a concept and strategy on how to proceed. The Committee noted that it appeared that the lease of the premises in Saturnusstraat would also run into 2016 and invited the Court to submit as soon as possible an analysis of all its current lease agreements with respect to the termination arrangements and the ensuing financial risks.²

3. In this report, the Court provides particulars of all its current lease agreements for its interim premises, and an overview of the termination arrangements and possible financial risks, as well as proposals for its future strategy.

II. Lease agreements

4. In 2008, having had its interim premises at the Haagse Arc building since 2002 and following a request for more space in the Court’s interim premises, the host State negotiated for and rented the premises at the Haagseveste 1 building. The Court signed a lease with the Dutch Housing and Construction Ministry (RGD) for those premises. This lease was based on the terms agreed between RGD and the owners of the building. At that time, those terms included two possible termination dates each, with a fifteen-month notice period. Those

* Previously issued as CBF/21/23.

¹ ICC-ASP/12/5/Rev.1, para. 96.

² *Ibid.*, para.97.

dates were 30 June 2014 and 30 June 2016. At that time these were the "best-guess" scenarios, based on estimates of progress on the permanent premises project. They were further influenced by the requirements of Eurojust, the organization that shares the interim premises with the Court. In the event that the Court requires these premises beyond June 2016, the lease may be extended for further periods of six months.

5. The next date for giving RGD the required 15 months' notice of termination is 31 March 2015, with a termination date of 30 June 2016.

6. The original lease for the Arc building and other associated properties was terminated on 30 June 2012, the original date up to which the host State agreed to continue paying for the Court's interim premises. In anticipation of this, the Bureau of the Assembly ("the Bureau") appointed three facilitators to assist the Court in negotiating a new lease. This process culminated in a reduction in rent in the region of €400,000 per year from that previously paid by the host State. It was suggested at that time, again on a "best-guess" basis, that the optimal termination date for the lease would be 31 March 2016. The notice of termination period is 13 months. There are options to extend this lease for periods of six months at a time.

7. Before completing the lease negotiations, the Court and the facilitators presented a final report to the Bureau in December 2011. The Assembly noted the report as transmitted by the Bureau, adopted the recommendations made therein and authorized the Court to conclude a rental agreement for its interim premises on the basis of the terms outlined in the report.³

8. The lease for the Arc building was duly signed. The lease for the premises at Saturnusstraat 20, which incorporates the shared Court and Eurojust warehouse and car park was negotiated on the same conditions as the Arc, that is, the lease will terminate on 31 March 2016. This reflects the decision of the Assembly. At the time of writing, this lease has not been signed, since discussions between RGD and the Court on the legal terms of the contract have only just been concluded. The lease is now ready for signature. The Committee will be updated on this at or before its twenty-first session. The rent and termination dates for this lease have been agreed and RGD has signed the relevant agreements with the property owners.

9. Since the Assembly's decision, the host State has agreed to pay the rent and maintenance for the interim premises of the Court until the end of 2012, and fifty per cent of the costs from 1 January 2013 to 31 December 2015, up to a maximum of €3 million per year.

III. Strategy

10. Due to the current depressed state of the real estate market, it may not be in the interest of building owners to consider shortening the terms of the existing leases. As the Court's leases are contracted with RGD, it may therefore be more effective if States Parties were to liaise directly with the host State on the matter.

11. The Court discussed the matter with the Vice-Chair of the Oversight Committee on permanent premises and agreed on the following common approach:

12. RGD has indicated to the Court that it will not be possible to reduce the remaining terms of the leases. However, the host State will be responsible for refurbishment of the building following the Court's departure. Since this will involve it in occupying the building and paying rent over a considerable period of time while the necessary works are carried out, the Court will engage with RGD and the host State to examine the possibility of having the latter take over the final months of the lease and incorporate them into the building refurbishment process. This could potentially reduce costs to the Court and allow the building to be ready for its next tenants at an earlier date than planned. This would require the cooperation of the host State, RGD and the building owners.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Tenth session, New York, 12-21 December 2011* (ICC-ASP/10/20), vol. I, part III, resolution ICC-ASP/10/Res. 4, section K.

13. However, one difficulty facing this possibility is that it is anticipated that the Court's co-tenant, Eurojust, will leave the interim premises no earlier than the second quarter of 2016. This adds another factor, which may cause complications in the negotiations with RGD.

14. Further negotiations by the Assembly, aimed at securing a continuation of the host State subsidy to the end of the Court's leases may also be appropriate.

IV. Financial risks

15. The cost implications for the interim premises in 2016 are as follows (prices at 2014 level):

Rental for Haagseveste to 30 June	€775,055
Rental of Haagse Arc to 31 March	€699,838
Rental of Sundry Land to 31 March	€23,373
Rental of Warehouse and Parking	€67,500
RGD Margins	€60,000 (estimated)
Owner's Assets Service Costs	€90,600
Maintenance of Premises by RGD	€153,250 (maximum cost)*
Total estimated costs in 2016	1,896,616

*The maintenance cost of €153,250 will depend on whether the interim premises are occupied or not.

V. Conclusion

16. Re-negotiating the terms of the leases will be difficult through normal commercial channels, as it is not in the interest of the building owners to do so. It might be practical for States Parties to become involved by asking the host State to intervene in order to secure a possible shortening of the leases.

17. The Court will also engage with RGD and the host State with a view to having the latter take over the leases prior to their official termination dates, so that refurbishment works may commence earlier than planned.

18. Should it not be possible to shorten the leases, States may wish to convince the host State to extend its offer to pay 50 per cent of the rent of the interim premises beyond the end of 2015 until the termination dates of the various leases.

19. Should none of these options prove fruitful, the Court runs the risk of bearing the entire financial burden of the lease and maintenance of interim premises into 2016 up to their respective termination dates.
