



## Tenth ICC-ASP Bureau Meeting

12 July 2011

### Agenda and Decisions

*The President of the Assembly, H.E. Mr. Christian Wenaweser (Liechtenstein), chaired the meeting.*

#### 1. Interim premises

The President recalled that at its 29 June 2011 meeting in The Hague, the Bureau had focused on the issue of the interim premises and had decided to pursue the discussions on the interim premises on two tracks:

- a) Options for continuing negotiations with the landlord of the Arc building on the prospective new lease; and
- b) Who would pay for the interim premises as of 1 July 2012?

He also recalled that the Bureau had tentatively agreed to set a target date of 30 September 2011 for the conclusion of negotiations on the new lease. As regards the negotiations with the landlord of the Arc building, the Bureau would have a choice between two options:

*Option A:* Entrust a State or a small group of States to lead the negotiations;

*Option B:* Mandate the Court to lead the negotiations;

The President noted that Option B could entail the presence of a State Party or a group of States Parties and that both options would necessitate the engaging of technical expertise, as was agreed at the 29 June meeting of the Bureau. He had been informed by the Court that quotes for an external party to assist the Court in negotiations were between €5,000 and €8,000. The actual cost may be lower, depending on the amount of work undertaken, so €8,000 should be the maximum amount that may be required.

Support was expressed for setting a deadline of 30 September for the conclusion of negotiations on a new lease. Support was also expressed for the Court to conduct the negotiations with the presence of a State Party element if Option B were to be chosen. The question of the form the State Party element would take was raised.

The President noted that the choice of external expert would best be left to those in The Hague who were most directly involved. At the previous Bureau meeting, the options that had been discussed were the Brink Groep or the Rijksgebouwendienst. Regarding the form which State Party involvement would take, the President stated that this would have to be further considered. In his opinion, it would seem natural for the two States that have facilitated question of interim premises in The Hague, i.e. Australia and Nigeria, to continue in this role, should they be available.

With regard to the letter from ING Real Estate (the landlord) dated 30 June 2011, the question was raised whether the proposal to extend the notice period and the expiration date of the lease still stood.

The President stated that the notice period and the expiration date of the lease had both been extended, respectively, by one month, to 31 July 2011, and to 31 July 2012. No notice had therefore been given yet on the lease. As regards further extensions, he stated that, in his understanding, the offer was still on the table.

Some delegations, noting that the new lease would need to be approved by the Assembly in December, expressed support for exercising that option.

The host State noted that it had shown flexibility by extending the notice period by one month, due to a misunderstanding between the Court and the landlord. This, however, was far as it was prepared to go. It recalled that it would not pay the rent for the interim premises after 1 July 2012, but would serve as a guarantor for the period 1 to 31 July 2012, and would not act as a guarantor for the period after 31 July 2012. This function would have to be taken up by the Court or the Assembly.

The President noted that the misunderstanding referred to by the host State had yet to be resolved, as the landlord's indications hitherto would seem to have been contradictory. The landlord had initially agreed to hold exclusive talks with the Court on the extension of the lease. It subsequently indicated, however, that it would feel free to consider other tenants after notice on the present lease had been given. It was still unclear how attractive the interim premises would be to other potential tenants, though the prevailing view in The Hague was that the landlord would have difficulty finding other tenants.

The question of the option to purchase the interim premises was raised, and it was suggested that the host State might consider purchasing the building in question. The representative of the host State stated that this would not be an option for the host State. The President noted that the option of purchase of the interim premises by the ICC had been mentioned at the 29 June 2011 Bureau meeting and was being studied in The Hague.

The Bureau expressed its gratitude for the work undertaken by the co-facilitators, Australia and Nigeria, and decided to mandate the Court to continue negotiations with the landlord on the extension of the lease for the interim premises, with the assistance of a State Party element. The Bureau invited Australia and Nigeria to continue their role in this regard. The Bureau also decided to authorize the services of an external consultant, based on the preference expressed by States Parties in The Hague, with the understanding that the total funds needed for this consultancy would not exceed €8,000 and would be absorbed in the 2011 budget. It agreed to convey confirmation in this respect as soon as it was received from the Court. The Bureau further decided to set a deadline of 30 September 2011 for the conclusion of negotiations.

## **2. Permanent premises**

The Bureau took note of the report of the Oversight Committee to the Bureau, dated 7 July 2011, and in particular the use the project's contingency fund in the amount of €1.5 million for 2011 3gv costs.

The host State recalled that the Oversight Committee had determined that the Assembly, before the end of the year, would have to appropriate funds in excess of €20 million for fixed assets of the permanent premises, so that they could be put to tender. The

preferential host State loan for the permanent premises did not cover fixed assets. In light of this and the additional costs due to the rent for the interim premises, the host State proposed considering extending the criteria of the loan to cover fixed assets. The amount of the loan would remain €200 million. The host State would consider such an extension of the criteria of the loan only if States Parties would agree to pay the rent of the interim premises starting in July 2012.

Appreciation was expressed for the efforts of the host State. Some members of the Bureau, with reference to the final report of the facilitators, dated 7 July 2011, referred to the benefit accruing to the host State from hosting the Court. They suggested that the host State continue paying the rent of the interim premises until the permanent premises are ready. It was also suggested to take up consideration of the offer of the host State in the context of the Oversight Committee.

The host State noted that it had submitted a bid in order to host the Court. This entailed a commitment to pay for the Court's interim premises for 10 years, and the host State was fulfilling this obligation completely. The host State noted that, in terms of a proportion of gross domestic product (GDP), it was by far the largest net contributor to the Court. The host State's non-paper contained an overview of its expenditures related to the Court, though many of the expenses incurred cannot be quantified. Moreover, the host State faced additional problems such as witnesses who become asylum seekers. The economic benefits to the host State were grossly exaggerated.

### **3. Consultations to identify a President for the tenth to twelfth sessions**

The focal point, Ambassador Simona Miculescu (Romania), informed the Bureau that she had identified Ambassador Tiina Intelmann (Estonia) as a candidate to succeed Ambassador Christian Wenaweser (Liechtenstein) as President of the Assembly. Ambassador Intelmann was currently serving as Ambassador of her country to Israel. Between 2005 and 2010, she had served as Permanent Representative of Estonia to the United Nations in New York, where she had served as co-facilitator on system-wide coherence, Chairperson of the Consultative Committee of UNIFEM and as Chair of the UN General Assembly's Second Committee, among other positions.

The representative of Estonia added that, in addition to her five years as Permanent Representative to the United Nations in New York, Ambassador Intelmann had also served as Deputy Permanent Representative to the UN in the 1990s. She enjoyed the full support of the Estonian Government. If elected, Ambassador Intelmann would serve as an Ambassador at Large, being able to devote all of her time to the work of the Assembly, without having to take care of other duties normally carried out by permanent representatives, which would be a remarkable asset for the Court and the Assembly. She noted that Ambassador Intelmann's extensive experience in leading a number of negotiation processes would make her a decisive leader for the Assembly. Ambassador Intelmann would be available to take up her position immediately upon election. As the election would take place in a somewhat non-traditional time frame, special arrangements regarding the transitional period may become necessary.

The President stated that he had had several conversations with Ambassador Intelmann and would be happy to see her take over the work of the Assembly. However, as she would not be available in New York before December, the suggestion of extending the term of the current Bureau for six months, in order to allow for a transition, had been raised. According to this proposal, Ambassador Intelmann would be elected by the tenth session of the Assembly, which would also extend the term of the current Bureau for six months. The new Bureau and President would serve from June 2012 to June 2015, which would cover the eleventh, twelfth and thirteenth sessions of the Assembly.

The Bureau expressed its appreciation to the Government of Estonia and thanked it for putting forward the candidature of Ambassador Intelmann, especially since she would serve in the position of President of the Assembly on a full-time basis. The Bureau also expressed its appreciation to Ambassador Miculescu for her work in this regard, and to Ambassador Wenaweser for his continued availability in order to manage the transition.

Regarding the extension of the term of the current Bureau, the question of further consultations was raised. The length of the terms of this and future Bureaus was also raised.

The President stated that further consultations would be necessary, including with the Assembly as a whole. In his view, this would be the only Bureau with a term exceeding three years and all future Bureaus would have full three-year terms, beginning in June, rather than in September/November/December, as was previously the case.

While some members of the Bureau were open to the possibility of extending the term of the current Bureau, others expressed hesitation. It was noted that such an arrangement might not be consistent with rule 29 of the Rules of Procedure of the Assembly of States Parties. Ambassador Intelmann was invited to arrive in New York in time to allow for a transition before the tenth session of the Assembly. Should that not be possible, the possibility of electing the new Bureau and President at the end of the tenth session of the Assembly was raised. It was agreed to hold further consultations on this issue, led by Ambassador Miculescu, with a view to resolving this issue before the summer break.

#### **4. Consultations to identify a Bureau for the tenth to twelfth sessions**

The focal points informed the Bureau that there were no further developments to report since the last meeting of the Bureau.

#### **5. Search Committee for the position of Prosecutor**

The Coordinator of the Search Committee, H.R.H. Prince Zeid Ra'ad Zeid Al-Hussein (Jordan), informed the Bureau that he had travelled to Seoul, Republic of Korea, on 26 June, attended meetings of the International Association of Prosecutors (IAP) and the subsequent Summit of Prosecutors-General. He had briefed the IAP on the work of the Search Committee and held consultations with three candidates already under consideration by the Search Committee. He stressed that these talks were not interviews, but rather preliminary talks. He had also met with one new potential candidate, and held talks with Directors of Public Prosecution and Prosecutors-General. He would report the details of his activities to the Search Committee at its 18 July meeting.

The Coordinator noted that his travels had coincided with the announcement by the African Union that its Heads of State had decided to endorse the candidature of Ms. Fatou Bensouda. He noted that he had previously expressed his hope that there would be no decisions on candidatures before the completion of the Search Committee's work. He had also hoped for a strong statement of support from States Parties for the work of the Search Committee, which had regrettably been blocked by one State Party. He stated that while there was no doubt that Ms. Bensouda was one of the strongest candidates, there were others, and that the Search Committee would continue its work.

The President indicated that the Coordinator would brief the New York Working Group on the work of the Search Committee on 20 July.

## **6. Interim report of the Study Group on Governance**

The Bureau took note of the interim report of the Study Group on Governance, dated 1 July 2011, and requested the Secretariat to convey it to the New York Working Group.

The representative of the Netherlands stated that States Parties and organs of the Court had used the Study Group in a positive way, and expressed her appreciation to the focal points, Japan, Mexico and the United Kingdom. She also commended the President for his personal commitment to the Study Group.

## **7. Other matters**

### *a) Selection Panel for the Head of the Independent Oversight Mechanism*

The President recalled that the candidate previously chosen by the Selection Panel for the post of Head of the Independent Oversight Mechanism had been unable to take up that post.

In light of the fact that the 11 July 2011 letter from the Chair of the Selection Panel and the accompanying Personal History Form had been conveyed to the Bureau on 11 July, the Bureau decided that it would recommend the appointment of Ms. Madeleine Schwarz according to the terms proposed by the Chair of the Selection Panel upon the expiration of a silence procedure, which would end at noon (CET) on 15 July 2011.

### *b) Contingency Fund*

The Bureau took note of the letter, dated 15 June 2011, by which the Registrar, pursuant to regulation 6.7 of the Financial Regulations and Rules, submitted to the Committee on Budget and Finance a supplementary budget notification in the sum of €1,098,000, to cover unforeseen expenses in relation to on-going trials, upon the expiration of a silence procedure, which would end at noon (CET) on 15 July.

### *c) Next Bureau meeting*

The next Bureau meeting will be held on 26 July.

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