



Ninth ICC-ASP Bureau Meeting

29 June 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. Independent Oversight Mechanism

The Bureau took note that the United Nations Under-Secretary-General, Office of Internal Oversight Services (OIOS), Ms. Carman LaPointe, had informed the Temporary Head of the Independent Oversight Mechanism (IOM), Ms. Beverly Mulley, that, due to the vacancy situation in OIOS, it was not possible to extend her secondment to the Court beyond 18 July 2011.

The Bureau also took note that the candidate selected for the post of Head of the IOM, had informed the Registrar that he was not in a position to accept the offer of employment, as he could not be formally released from his employer before March 2012.

The Bureau decided to renew the mandate of the Selection Panel and requested it to revisit the recruitment process with a view to filling the position of Head of the IOM as soon as possible by recommending one name, pursuant to resolution ICC-ASP/9/Res.5. Given the brief timelines involved, the President indicated that the procedure of approving the forthcoming recommendation of the Selection Panel could be finalized via a silence procedure.

On a parallel track, the Bureau also mandated the Registrar to initiate exploratory talks with OIOS regarding the feasibility of the temporary secondment to the Court of another person.

2. Interim Premises

Second interim report of the facilitators

The co-facilitators, Australia and Nigeria presented a second interim report to the Bureau summarizing the status of discussions with the relevant stakeholders on the issue of interim premises rent.¹ The two issues to be considered were: 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.

As regards the latter issue, the host State had reiterated its prior position that the host State bid commitment for a rent-free period of 10 years ended on 30 June 2012, noting that it would also assume the cost of restoring the interim premises to its original state once the

¹ The first interim report was presented orally to the Bureau on 7 June 2011.

Court moves to the permanent premises and that it had also assumed significant investments in the permanent premises project.

The facilitators highlighted the financial and reputational benefits to the host State derived from having the seat of the Court in The Hague, emphasizing in this connection the acknowledgment of the economic benefits by the Government of the Netherlands and the Municipality of The Hague and noted the contrast with the considerable support received by international organizations in other host States which included perpetual rent-free periods and the donation of purpose-built facilities.

The final report, which would be submitted for consideration by the Bureau at its 12 July meeting, would contain a spectrum of options to facilitate the Bureau discussions on the subtopic.

As regards the negotiations with the landlord for the extension of the lease, the second interim report proposed five potential options ranging from extending the mandate of the Rijksgebouwendienst (RGD) to entrusting the Court, a facilitator or a panel of States Parties, to undertake that endeavour, with the assistance of an external consultant (such as RGD or Brink Group). The suggestion for a 30 September 2011 deadline for the negotiations and a process of consultation with the Committee on Budget and Finance in October was also envisaged.

The facilitators informed the Bureau that the landlord had indicated that they would strongly consider committing solely to negotiations with the Court with a view to presenting a contract for decision by the Assembly of States Parties in December 2011 and not searching for prospective new tenants during this period. For its part, the host State indicated that it had been informed by the Court that written confirmation from the landlord to that effect was on its way.

Host State

The host State expressed its preference for options 4 or 5, which would entail the appointment of a facilitator or a panel of States Parties, to pursue the negotiations in conjunction with the requisite technical expertise of the local real estate market. This would pave way for the Assembly to make a decision in December.

As regards the payment of rent for the interim premises as of July 2012, the host State reiterated that the 10-year period had been agreed upon by all parties involved. Moreover, it noted the sensitive nature of the matter, welcomed the fact that at this meeting costs and benefits for the host State would not be discussed again but that focus would be on the process, stated that the overall contributions of the Netherlands to the ICC premises (interim and permanent) amounted to approximately €225 million, indicated that it was continuously addressing, with the municipality (financial) problems related to the premises, noted that the host State was going through a difficult period of budgetary constraints and thus did not have financial means to continue paying for the Court's rent beyond that date. Furthermore, the Netherlands had host State agreements with 35 other international organizations, some of which would possibly also be interested in renegotiating parts of their own host State agreements – a path the Netherlands did not wish to embark upon.

Bearing in mind that the budgetary needs of the Court went beyond the issue of paying for the rent of the interim premises as of July 2012, the host State noted that the Court would need an additional €60 million in the near future which could be broken down as follows:

- a) €20 million for rent;
- b) €20 million for fixed assets of the permanent premises (3gv costs of Box 4); and
- c) €20 million for movable assets of the permanent premises (2gv costs of Box 4).

In order to bring the discussion on the rent issue to an end, the host State might consider broadening the host State loan for the permanent premises in order to cover the fixed assets of Box 4 (3gv). Although not an ideal solution, the host State was of the view that its proposal, which still had to be elaborated further and might require some bilateral consultations as well, would nonetheless diminish the need for States Parties to finance such costs in the immediate future and facilitate further discussions at the tenth session of the Assembly.

Bureau members

Support was expressed for pursuing the discussions on the interim premises on two tracks: First in the framework of the discussion how to continue the process of negotiations, and then the question of who will pay for the rent starting July 2012.

In connection with the issue of who would assume responsibility for paying the rent as of July 2012, the point was made that such a discussion should be part of a full range of issues. Another suggestion was that additional efforts could be undertaken to try to identify who could pay for the rent, such as for example the Municipality of The Hague. It was also posited that having received a proposal from the host State, States Parties would need to prepare a counter-proposal.

As regards the way forward to pursue the negotiations of the extension of the lease, the interim report essentially called for a decision on who would take the lead thereof: the Court, a facilitator or a panel of States Parties.

In this connection, it was noted that the negotiations could constitute a tremendous responsibility and burden for the panel of States Parties, which had continued to invest considerable time and efforts via the Oversight Committee on permanent premises. A view was also expressed however that since the discussions with the landlord had advanced considerably, the burden for such negotiations would be less than envisaged. It was also noted that as the ultimate decision would have to be made by States Parties it might thus be preferable for them not to be part of the negotiations so that they could make an objective assessment of the outcome thereof.

There was general agreement that an external expert, with requisite knowledge of the local real estate market, local laws and the ability to make a technical assessment of offers from the landlord, should be engaged in the negotiations. In this connection, reference was made to two possible external experts.

A view was expressed that the Court could take the lead in the negotiations with the assistance from an external expert, but with an additional assistance by States Parties.

The view was expressed that the offer from the landlord to the Court to consider buying the Arc building should not be completely dismissed. For their part, the facilitators indicated that they had not given any reply to the offer of a possible purchase of the Arc building and noted that as such an option should not be excluded, there could therefore be merit to conduct further exploration of the matter with the landlord since large expenditures were looming over the next decade.

The Registrar noted the importance of notice in the negotiations with the landlord in light of the uncertainty of when the permanent premises would be completed. She further indicated that the Court would continue its existing negotiations with the landlord on the lease extension, that it had no particular preference for any of the options proposed by the facilitators and that it was prepared to assume any role entrusted by the Bureau.

It was also stated that the proposal of the host State should be addressed by the Oversight Committee and that as the issues of permanent and interim premises were interlinked, there was need for coordination between the Oversight Committee and the Bureau.

The President conveyed the appreciation of the Assembly to the facilitators, in particular Amb. Lydia Morton (Australia) who had assumed the task during the final weeks of her posting to the Netherlands. He summarized the agreements that had resulted from the discussion of the Bureau meeting: that work on the issues by all involved needed to proceed expeditiously; that a discussion on the structure to be set up for the negotiations on an extension of the lease had to be discussed; that there was an agreement on the need for external technical assistance for the negotiations, but that a decision was still required on who would be engaged to provide such assistance; that 30 September 2011 would be the deadline for concluding the work; that all involved continue to consult along these lines and that the outcome of such consultations be reflected in the final report of the facilitators to the Bureau, which would be submitted for consideration and decision at its 12 July meeting.

3. Search Committee for the position of Prosecutor

The President briefed The Hague-based Bureau members on the work of the Prosecutor Search Committee. He recalled that the Committee was both receiving expressions of interest as well as actively searching for candidates and noted that the Committee had reviewed 24 applications, out of which 21 were under consideration.
