



Eighth ICC-ASP Bureau Meeting

14 June 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 the Bureau had been requested to give guidance to the Court along the lines of Section 5 of its report, wherein the Court outlined options for the Bureau with regards to the interim premises.

The representative of the host State noted that the ING Real Estate (the landlord) would like a reaction from the Court, and thus the Bureau, to the proposal it had tabled before any further negotiations were to occur. She recalled that the Bureau had instructed the Court to engage the Rijksgebouwendienst (RGD) to enter into negotiations with the landlord. The Registrar was now looking to the Bureau to react to the outcome of those negotiations.

The current lease would be terminated by the RGD on behalf of the government of the host State by the end of June. Though the landlord did not wish to discuss it at the present, one possible solution could be an extension of six months while making the decision. While stressing that ING did not in any way form part of the government of the host State, she noted that the landlord might be prepared to agree to such a postponement if the contract were to be extended until the end of 2012. The government of the host State would not sign a new lease. Having the Court be the signatory of a lease would not be a novum, as this had already happened in the case of the Haagse Veste building.

The representative of the host State drew the attention of the Bureau to the discussions of the Oversight Committee of the Permanent Premises. She noted that more than €40 million would be needed before 2014 for the permanent premises to cover fixed and moveable assets, or “box 4 costs”. The Brink Groep consultancy had concluded that lowering this amount would be irresponsible. An increase of the Court’s budget would thus be necessary. It had been suggested that the fixed assets, or 3gv costs, could be brought under the host State loan. This would not be possible for the host State under the present parameters. However, the host State would be willing to consider such an extension of the loan on the condition that the Court pays for its own rent.

The President recalled that the matter under discussion at the present were the interim premises. He suggested taking note of the offer of the host State, in particular the view that the topics involved are to be considered as a package.

Support was expressed for option C, while also cautioning against budgetary implications.

Support was also expressed for the pursuit of option B in the first instance. This would allow the Bureau additional time to consider the lease and to consider whether endorsement by the Assembly at its December session would be necessary. It may become necessary to consider option C, especially as, with regard to article 112, paragraph d), of the

Statute, it might not be in the Bureau's competence to endorse a lease agreement.

The President noted that such approach would allow two weeks for pursuing two options, neither of which was guaranteed to yield a positive response.

The fact that RGD and Brink Groep had both found the overall package proffered by the landlord to be acceptable was welcomed. It was also noted that neither report considered a move to alternative premises feasible.

The representative of the host State recalled that the Court was not the only tenant of the Arc building, and that the landlord only wished to negotiate with the RGD. The landlord was a part of ING Holding, and there was a possibility that this company may use the building itself. She cautioned that the landlord was not in a weak bargaining position, as it was aware that the Court had no other options.

The question of budgetary implications was raised. The President responded that option B would be "without extending the lease for a corresponding period" and that in his opinion, there did not appear to be budgetary implications. He noted that the ultimate question was whether the Bureau was empowered to approve such a package. This matter was linked to the question of who pays the rent, which was not currently under discussion.

The question was raised as to what would happen if the landlord rejected both option B and option C. The President responded that the Court would be mandated to report back as soon as possible, and that another Bureau meeting, possibly to be held in The Hague, would be needed.

The possibility of adopting the lease agreement by silence procedure within the Assembly was raised in case the landlord rejected both options B and C. It was noted that such an approach would be difficult, due to the complexity of the matter, and that because it was the responsibility of the Bureau to reach a decision on this issue. The President noted that such an approach could cause discomfort, as it could be seen to partially prejudice the budget negotiations of the tenth session of the Assembly. Given that the Bureau had not made such decisions in the past, States would have to consider this question carefully as it had wider implications.

The representative of the host State stated that the Assembly was not empowered to decide that the host State has to pay for the rent and that this was a sovereign decision.

The Bureau decided to mandate the Court to pursue option B of its report. In the event of a negative response, the Court was mandated to pursue option C. Furthermore, the Bureau requested the Court to report on the outcome of its negotiations as soon as possible and to clarify paragraph 15 e) of its report, in particular the meaning of the phrase "the lease agreement will now run for an indefinite period".

2. Other matters

a) Next Bureau meeting

Members of the Bureau will be informed of possible future Bureau meetings, should the need arise, in advance of the next scheduled meeting.
