



**Fourth ICC-ASP Bureau Meeting**

**23 March 2011**

**Agenda and Decisions**

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

**1. Election to fill a vacancy on the Committee on Budget and Finance**

By letter, dated 14 March 2011, a member of the Committee on Budget and Finance (“the Committee”) from the Asian group submitted his resignation from the Committee as of 14 March 2011 (attached).

The delegation of Japan informed the Bureau that a replacement candidate for the resigned member of the Committee had already been endorsed by the Asian Group and would be submitted during the nomination period.

In light of the desire of the Assembly to ensure a full membership of the Committee, and given the upcoming sixteenth session of the Committee on 11-15 April, the Bureau decided to fix a nomination period which is shorter than the one used for other elections, in accordance with paragraph 2 (a) of the amended annex to resolution ICC-ASP/1/Res.4, to run from 23 to 31 March 2011. Following the closing of the nomination period, the Bureau decided to elect a member of the Committee at its next meeting on 5 April 2011, pursuant to paragraph 2 (b) of the annex.

The Bureau requested the Secretariat to digitally disseminate the note verbale (attached) to States Parties.

**2. Interim premises**

The view was expressed that this topic should be examined by the Committee on Budget and Finance.

The representative of the host State commented on the Court’s report to the Bureau of the Assembly of States Parties on the interim premises, dated 17 March 2011. She took issue with the characterisation in paragraph 14 (c) of the report that the contributions of the host State as ‘relatively modest.’ She indicated that the host State pays assessed contributions of €2.6 million, which is in line with its gross domestic product (GDP); while other States may pay a higher assessed contribution, that is in line with their GDP being proportionally higher. In addition, the host State, by next year, will have paid about €200 million for the interim and permanent premises.

With regard to paragraphs 22 and 23 of the Court’s report, the representative of the host State informed that the host State had provided the Court with all relevant information on its own initiative. The Ministry of Foreign Affairs of the Netherlands must give a notice of termination to the Rijksgebouwendienst, the governmental agency that manages all properties leased by the government by 1 April 2011, and it has been decided that such notice will be given. This agency has entered into a lease with the owner of the Court’s building, ING Real Estate. The Rijksgebouwendienst in turn must give notice to the owner by 1 July 2011. The Ministry has no choice but to give notice of termination, otherwise the lease will be extended automatically.

The representative of the host State informed that the Minister of Foreign Affairs of the Netherlands had informed the President of the Court when they met that the host State is not in a position to extend the rent-free period. Accordingly, the Court will have to cover the costs of the rent starting 1 July 2012.

The representative of the host State also stated that the numbers stated in paragraph 27 of the Court's report appear to be too low. She also commented that paragraph 34 incorrectly stated that the Court must inform the Ministry of Foreign Affairs of the Netherlands whether it wishes to renew the lease by 1 April. In fact, the Ministry has to inform the Rijksgebouwendienst by 1 April whether it wishes to terminate the lease, which has already been decided. The second deadline refers to the date by which the Rijksgebouwendienst must give notice to the building's owner that it wishes to terminate the lease.

The representative of the host State informed that the option now on the table is that the Ministry of Foreign Affairs of the Netherlands, together with the Court will ask the Rijksgebouwendienst to start negotiations with ING Real Estate on extending the lease. The Ministry has offered to cover half the cost of these negotiations. Excluding the portion of the costs borne by Eurojust (the building's other tenant), approximately €12,000 will have to be paid, of which the Court would have to cover approximately €5,000, according to the proposal of the host State.

The President stated that the second deadline seems to be of more relevance to the Assembly. If notice were given to ING Real Estate at that time, the building would be put on the open market and possibly lead to an increase in rental costs. If no notice is given, it may be possible to renew the lease under the same conditions.

A member of the Bureau stated that his delegation was not convinced that the States Parties must bear the costs for the interim premises. He suggested dividing the issues between who will pay and what sort of contract is feasible and desirable. Pending the decision of who will bear the costs of the interim premises, discussions on the most cost-effective arrangements for the interim premises should go forward. While the report refers to two options, a lease through the Rijksgebouwendienst and one directly from ING Real Estate, a third option, namely the continuation of the present arrangement whereby the Ministry of Foreign Affairs leases the building for use by the Court, is possible. This would not necessarily mean that the Ministry would bear the costs of the rent. The member of the Bureau also supported a referral of this matter to the Committee on Budget and Finance.

The President informed that through contacts with the Court, the host State and the Vice-President of the Assembly in The Hague, he had undertaken discussions along the lines indicated, in particular on the possibility of continuing the discussions on two tracks – with the question of who will bear the rental costs being dealt with separately. There was a common interest between the host State and States Parties to secure the best possible conditions for a renewed lease. In that respect, he has been in contact with the Court, the host State and the Vice-President of the Assembly in The Hague on the options discussed in The Hague to produce a joint letter from the host State and the Court to move the process forward. As regards the Committee on Budget and Finance, the issue had already been informally conveyed to its Chair, and he would support transmitting the issue to the Committee formally.

The representative of the host State stated that her government had proposed a joint letter, wherein the host State and the Court would agree to hire the Rijksgebouwendienst to negotiate options for the extension of the lease with the Court, Eurojust and the owner. She added that there will be difficult discussions about who will pay the rent, which are being left open for the moment, though the decision of her Minister remained final. The host State would pay half of the fee for these negotiations, which could be included in the letter. The Rijksgebouwendienst would be jointly hired to conduct these negotiations.

The representative of the Court supported the idea of a joint letter, which would allow the process to begin and the Court to get a better deal in the end. However, although the Court supports this as an interim solution, it does not answer the main question, which is who will pay

for the interim premises. States Parties would still have to decide this issue. The Court would also need some guidance from the Bureau on the content of the letter given that Court wanted to avoid an obligation for it to pay.

The President commented that the letter would create a two-tracked process. On the one track, there would be agreement that negotiations on the extension of the lease would carry on. The matter of payment would be put on a separate track, to be concluded at a later stage.

A member of the Bureau suggested circulation of the draft joint letter before it is signed.

The representative of the host State expressed her hope for the letter to be sent as fast as possible, in order to allow negotiations to begin. As a State Party, the host State wishes to keep costs as low as possible. She also commented that the negotiations would not bind the Court. Only a signature on a contract would have that effect.

The Bureau decided to request the Court and the host State to draft a joint letter that would allow an immediate negotiation on the modalities for the extension of the lease of the interim premises, without prejudice to who will cover the costs of the rent, and to convey a draft of the letter to the Bureau as soon as possible. The Bureau decided also to circulate the draft letter as soon as it was received, and to approve it subject to a silence procedure of at least three working days. The Bureau decided further to request the Committee on Budget and Finance to take up the matter of the interim premises at its forthcoming session.

### **3. Other matters**

*a) Developments regarding the request of the Government of Kenya pursuant to article 16 of the Rome Statute.*

The President informed the Bureau that, on the request of several delegations, he had convened a meeting between States Parties of the Rome Statute that are members of the Security Council on 14 March to engage in a dialogue with the delegation of Kenya on matters regarding to its request pursuant to article 16 of the Rome Statute. At the meeting, the Permanent Representative of Kenya had made a presentation, which was followed by a discussion.

The Security Council itself held an informal interactive dialogue on the subject on 18 March.

*b) Cooperation between the United Nations and the Court*

The President informed the Bureau that he had met with Mr. Alain Le Roy, Under-Secretary-General of the United Nations for Peacekeeping Operations, last week in order to discuss the interaction between the United Nations Mission in Sudan (UNMIS) and Ahmed Haroun, who is indicted by the Court. The President expressed his concern at the second incident of the transport of Haroun by UNMIS aircraft, which had recently been reported in the press. He informed the Under-Secretary-General that, from the perspective of States Parties, who are interested in full cooperation with the Court and the execution of its arrest warrants, such actions are problematic.

*c) Next Bureau meeting*

The next Bureau meeting will be held on 5 April 2011.

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