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**Report of the Court to the Bureau on the lease negotiations
for the interim premises of the International Criminal Court**

1. Pursuant to the mandate granted by the Bureau on 29 July 2011, the Court, assisted by the facilitators (Nigeria, Germany and Australia) and separate technical expertise, has carried out negotiations with the landlord¹ for the ongoing lease of the *Haagse Arc* building, the Court's primary premises.² The current lease for the Court's premises at the *Haagse Arc* expires on 1 July 2012. However, the host State has agreed to extend payment of the rent for the *Haagse Arc* and the Court's additional interim premises until 1 January 2013.
2. The *Haagse Arc* building is occupied by the Court and by Eurojust, a judicial cooperation body of the European Union. The current rental agreement is between the landlord and the host State, the Court is not a party. However, the Court's co-tenant, Eurojust, sub-leases directly from the Dutch National Building Agency - the *Rijksgebouwendienst* ('RGD').
3. The Court conducted discussions with the landlord, pursuant to its mandate, from 29 July 2011 onwards with a view to securing more favourable rental conditions. Under the existing rental agreement the rental price per square metre is €195.7. The package, which has recently been agreed to by the landlord, envisages a price of €168 per square metre. This represents a saving of over €314,000 per year for the lease of the *Haagse Arc*. In order to illustrate the total, prospective, financial impact of the rent for the entire Court, annex I of this report includes a table outlining the cost, in 2011, to lease each of the properties occupied by the Court. This is currently paid for by the host State. As a basis of comparison, a table outlining the prospective rental cost for each property in 2013 is also included.
4. The total cost of the rent for the Court's premises in 2011 is €6,225,000. The projected cost for 2013 is €5,910,313. As outlined in paragraph 3, this represents a saving of €314,000 per year. Should approval be granted by the Assembly, it is proposed that the Court will seek, in 2012 and to the extent possible, to renegotiate the terms of the lease agreements for the Court's other leased premises (see annex I) with a view to securing more favourable terms.
5. A document outlining the key terms and conditions of the draft lease arrangement for the *Haagse Arc*, as negotiated with the landlord, is at annex II.

¹ The original landlord of the *Haagse Arc* premises was ING Real Estate. However, during the course of negotiations the property has been transferred to the ownership of CBRE Global Investments.

² The *Haagse Arc* houses the Courtrooms and the majority of the Court's organs, including the Chambers and the Presidency, the Office of the Prosecutor and the majority of the Registry.

I. Involvement of RGD

6. Originally, the possibility of the Court leasing the *Haagse Arc* premises via a direct lease agreement with the landlord was explored. The assumption was that this would increase efficiency and financial advantages. However, following extensive discussion with relevant stakeholders including the co-tenant, the RGD and a separate technical expert, additional considerations became apparent.

7. Under the current arrangement, both the Court and Eurojust are managed under separate lease arrangements with the RGD. Should the Court seek to lease directly with the landlord a difficult, and ultimately inefficient, demarcation exercise of the *Haagse Arc* would need to be carried out. Given the multitude of common areas utilised by the Court and Eurojust, in addition to the shared building running arrangements and the unique security situation, it became apparent that a lease for the Court's *Haagse Arc* premises directly with the landlord would prove to be considerably more costly and inefficient. In particular, as it would almost certainly involve the relocation of some Court staff and equipment.

8. Furthermore, under a sub-lease arrangement with the RGD, certain efficiencies pertaining to the servicing and maintenance of the premises were available which, when combined with considerations pertaining to the co-tenant, offset the additional cost. Furthermore, without RGD involvement the Court would need to expend additional financial and staff resources on the management of the service and maintenance under the lease agreement. RGD expressed a willingness to continue to act as lessee for the *Haagse Arc*, with separate side agreements with both the Court and Eurojust, to maintain the integrity of the existing operations of both organizations. RGD, in consultation with the Court and relevant stakeholders, agreed to negotiate further the prospective lease arrangements with the landlord.

9. There is an administration cost of €117,682 associated with RGD holding the lease on behalf of the Court. However, it is considered to be offset by the costs that might otherwise be incurred should the Court hold a lease directly with the landlord for the floor space it occupies at the *Haagse Arc*.

II. Additional considerations

10. Another important element of discussion was the host State's obligation to reinstate the parts of the *Haagse Arc* occupied by the Court to original condition.³ The reinstatement obligation will be triggered upon the final termination of the lease, which is expected at this stage to be on 30 March 2016. We understand that the landlord and the host State have entered into a bilateral discussion regarding realization of this obligation. RGD has conveyed that both parties are working towards an arrangement whereby the reinstatement obligation would be purchased by the host State, for an amount in Euros, from the landlord. In order to ensure clarity, the RGD has committed to include in the sub-agreement with the Court a clause stating that the Court will not be liable for costs connected to the fulfillment of the reinstatement obligation, including for any rent for the premises following the departure of the Court due during the reinstatement phase.

³ We understand that a side agreement was concluded between the host State and the landlord (then ING Real Estate) at the time the lease was initially entered into to which, inter alia, described the state of the premises at the stage it was occupied by the Court.

III. Prospective renegotiation of other Court premises

11. In addition to the *Haagse Arc* lease negotiations, it should be noted that the Court is occupying a number of separate premises⁴ in The Hague. A list of all the Court's premises is provided at annex I. The Court and the facilitators are of the view that it would be of value to attempt to renegotiate the terms of these agreements with a view to finding additional savings on the rent for the Court's premises.

IV. Recommendations

12. The Court recommends that the Assembly of States Parties:

(a) Approve the arrangement under which the Dutch Federal Building Agency, the *Rijksgebouwendienst* (RGD), would act on behalf of the Court as lessee of the floor space of the *Haagse Arc* occupied by the Court;

(b) Agree that the Court shall sign an agreement with RGD, in accordance with the terms outlined in this report, for the lease of the property which it currently occupies at the *Haagse Arc* premises; and

(c) Agree that the Court should make efforts to renegotiate the lease arrangements for the remainder of the Court's interim premises, where possible, with a view to finding improved rental conditions and further savings.

⁴ These premises are: the Haagse Veste I (housing, inter alia, operational sections of the Registry and the Trust Fund for Victims); Saturnusstraat (housing the Court's parking facilities, training, fleet and warehousing operations); Wegstraat (van parking facilities); and small parcels of land at Maanweg and Regulusweg.

Annex I

Breakdown

A. Haagse Arc (rent) 2011

Rent ARC-A	€2,450,000.00
Rent ARC-C	€80,000.00
Rent HAAGSE VESTE	€1,675,000.00
Rent REGULUSWEG	€13,000.00
Rent SATURNUSSTRAAT PARKEERTERREIN	€30,000.00
Rent MAANWEG ONGENUMMERD	€2,500.00
Total	€5,480,500.00

B. MVGM HUUR (rent)

Rent WEGASTRAAT	€44,500.00
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C. RGD ONDERHOUD (service costs)

ARC Based on experience	€400,000.00
HAAGSE VESTE Based on New Maintenance Contracts	€300,000.00
	€700,000.00
Total	€6,225,000.00

D. Projected rent for the interim premises 2013

Haagse Arc	<i>Year</i>	
Rent Office A ⁵	2013	€1,552,634.00
Rent Office C	2013	€742,841.00
Rent Basement and Storage	2013	€43,275.00
Rent parking (Now the D-Wing)	2013	€437,500.00
Rgd Apparatus (Admin.) costs	2013	€117,682.00
Total Charges Included in Agreement with RGD		€2,893,933.00
Service charge Arc C (Charged directly by owner)	2011	€70,832.00
Service charge Arc A (Charged directly by owner)	2011	€148,048.00
Total Cost of renting the Arc		€3,112,813.00
Haagse Veste		
Rent	2011	€1,678,000.00
Saturnusstraat 20 - Parking and Warehousing		
Rent	2011	€330,000.00 ⁶
Regulusweg land		
Rent	2011	€13,000.00
Maanweg land		
Rent	2011	€32,000.00
Wegastraat Sattelite van parking lot		
Rent	2011	€44,500.00
ARC Maintenance ⁷	2011	€400,000.00
Haagse Veste maintenance ⁸	2011	€300,000.00
Total projects costs for the interim premises		€5,910,312.00

⁵ The Haagse Arc A-wing under the 2011 table also includes the cost of the D-wing, which was formerly a parking area and now houses the Court's courtrooms. The D-wing is listed separately for the purposes of the 2013 rent table.

⁶ As outlined in paragraph 11 of the report, the Court intends to seek to renegotiate, where possible, the lease price and terms for the Court's other interim premises (*Haagse Arc* aside).

⁷ Estimated user maintenance formerly paid by host state.

⁸ Estimated user maintenance formerly paid by host state.

Annex II

Terms of lease

A. Rental price

1. Under the current rental agreement the price per square metre for floor space in the *Haagse Arc* is €195.70. Under the package negotiated with the landlord the cost per square metre has been reduced to €168. This represents a saving of over €314,000 per annum. The current total cost of the rent for the Court's premises in 2011 is €6,225,000. The projected total cost for the rent of the Court's interim premises in 2013 is €5,910,313 per annum;

(a) *Indexation*: the price per square metre will be linked to the rate of inflation in the host state, as determined by the Central Bureau of Statistics (www.cbs.nl) and linked to the Consumer Price Index. Therefore, if there is inflation of 1 per cent per annum in the host State the price per square metre of the *Haagse Arc* will increase by 1 per cent. The converse would also apply.

Clauses of this nature are standard in both commercial and residential tenancy arrangements in the host State. Indexation will commence from 2014; and

(b) *Tax free status*: it has been clarified that the Court enjoys tax free status in relation to the rent owing under the lease and also contracts for service and maintenance connected to the Court's premises. The rental price above reflects already the impact of this status, which was, we understand, enjoyed also by the RGD.

B. Term of the lease

2. It is envisaged that the Court's sub-lease with RGD will come into force on 1 January 2013. It is expected to terminate on 30 March 2016, in line with the timelines of the permanent premises project.

C. Flexibility in termination / extension

3. It has been agreed that, in case the permanent premises is completed ahead of schedule, the Court can terminate the agreement with one years notice at three month intervals. That is, the owner would accept notice on 31 March 2015, 30 June 2015, 30 September 2015 or 31 December 2015 for termination of the lease on 31 March 2016, 30 June 2016, 30 September 2016 or 31 December 2016 respectively;

4. The same quarterly notice requirements would apply for any potential extension of the agreement;

5. A regular dialogue between the Court and the landlord on the progress of the permanent premises project is envisaged.

D. Reinstatement costs

6. Another important element of discussion was the host State's obligation to reinstate the parts of the *Haagse Arc* occupied by the Court to original condition.⁹ The reinstatement obligation will be triggered upon the final termination of the lease, which is expected at this stage to be on 30 March 2016;

7. We understand that the landlord and the host State have entered into a bilateral discussion regarding realisation of this obligation. RGD has conveyed that both parties are working towards an arrangement whereby the reinstatement obligation would be purchased by the host State, for an amount in Euros, from the landlord;

⁹ We understand that a side agreement was concluded between the host State and the landlord (then ING Real Estate) at the time the lease was initially entered into to which, inter alia, described the state of the premises at the stage it was occupied by the Court.

8. In order to ensure clarity, the RGD has committed to include in the sub-agreement with the Court a clause stating that the Court will not be liable for costs connected to the fulfillment of the reinstatement obligation, including for any rent for the premises following the departure of the Court due during the reinstatement phase.

E. Renegotiation of lease arrangements

9. In addition to the *Haagse Arc* the Court occupies a number of separate premises in The Hague. It is envisaged that the Court will seek, during 2012, improved terms and conditions under these leases with a view to finding additional savings on the rent for the Court's premises.
