

XABIER AGIRRE: Good afternoon. Thank you for this invitation.

My name is Xabier Agirre, an analyst in the office of the prosecutor of the international tribunal in The Hague for the former Yugoslavia. I am speaking in my personal capacity.

I will recommend about investigations, and I want to say first of all that my impression is very positive. So far your recommendations, your plans look very promising. Of course, I read carefully everything related to investigations in your draft policy paper.

The main problem that we have again and again is that there is an assumption that the war crimes, or these types of crimes being such big events and so blatant, they should be easy to investigate. This often happens in the public eye, in public opinion, or in the opinion of policy-makers. It is so big that they should be easy to investigate. Well, this is wrong, this is conceptually wrong. The event itself may be blatant in its manifestation because the number of victims is very big, evidently, and the number of perpetrators as well.

It was the prosecutor in Nuremberg who would say at the end of his performance, at the end of the subsequent proceedings, he would say the issue of war crimes was far bigger and far more difficult a solution than anyone had anticipated beforehand. The message is: It is always more difficult than it looks beforehand, as for the investigations.

I remember our colleague, Vladimir Ooleg, always liked to say, our slogan should be "Never be happy," and that is very true for investigations.

Now, I'm pleased to see that the Investigation Section that you have defined is an adequately sophisticated one, I would say. We can see that it's an investigations division heavily intervened by legal staff and properly staffed by analysis people. I think that this is the right decision. I think this is good and I'm happy to see that.

Analysis is basically the function in between gathering and formulating the legal argument. Analysts are the people who sit in the office receiving the evidence, put together the package, assess the sources, the credibility, the reliability of the sources, and deliver the package to the prosecutors in charge, basically. Naturally this is very important for the ICC for reasons of law, for reasons of the matter to be investigated, and for reasons of management.

The reasons of law are clear in the sense that field investigations will be very limited. Under Articles 54 and 57, opportunities are going to be very limited. Investigations will have to rely on evidence submitted by third parties, national authorities, NGOs, et cetera, and that's why you need people sitting in the office and analysing all that evidence.

Reasons of the matter to be investigated are also obvious because of the complexity that we mentioned, particularly regarding a superior responsibility by the parameters of the Statute. The reasons of management are also clear, because the resources will be very limited and the task will be huge, so you better have a specific focus; you better elaborate hypotheses from the earliest stage that would guide very efficiently the investigation and help you to manage the limited resources.

I mentioned four points now that I find particularly important, and I can see that they have been dealt with properly in your documents, in your proposals.

Point number 1, high professional standards. Of course this is indicated, this is required by the Statute, as you know, Article 44. This is absolutely essential and this calls for people with high levels of education, experience, and a certain sophistication, should I say. I have seen that in the consultation process initiated by your staff

earlier this has been duly taken care of, and this is a very promising point of departure.

Point number 2, objectivity. This is absolutely essential. It's going to be essential for your credibility. I would expand this not only to investigations, which is clear, it's mandated by the Statute, but also to preliminary examinations so that the states affected have the warranty that the issues of willingness and ability will be assessed objectively, and information supporting or not the allegations, or the perception, will be equally assessed objectively.

Point number 3, certainly, Analysis Section. I can see that you have defined an autonomous unit with its own entity. This is good. I think this is the right decision. It should also operate as a safeguard for objectivity, having a group of people that are able to keep a certain distance. They have to work together, of course, but they also need to keep a certain distance from the investigation teams which would help to assist, to gain greater objectivity.

Point number 4, of course, integrating national knowledge. This is absolutely essential. There is no way that you can investigate a situation in a country without a thorough knowledge of the regional context of the evidence.

Finally, I would like to refer to the objective of putting an end to impunity. This is an essential defining objective of the tribunal that I would like to see explicitly and very clearly and strongly stated in your documents and in the policy.

It was Kafka who said, "Revolutions evaporate and leave the sediments of new bureaucracies." This always comes to my mind when we discuss these issues. There is always a risk that the revolutionary developments of the '90s may become in creating just a new bureaucracy. I know you are well aware of this risk, able and willing to prevent it,

but we have to keep this in mind.

And that it is why my last recommendation is that it is very important to look for the people that are truly committed to this objective of putting an end to impunity; people who truly understand the value and the purpose of the institution, and are not here just for personal interests.

Thank you very much.