

ELIZABETH WILMSHURST: Thank you, Mr. Prosecutor.

I'm speaking in my personal capacity; indeed, I have no other. But I've had a close involvement in the drafting of the Statute and other documents. I've been reflecting on the remarks that have been made yesterday and today, and I have three very general remarks of my own.

First, I've been very impressed by the extent to which the two draft papers have been supported and endorsed by the speakers in all of their principal aspects, and this does credit to the care with which your staff, particularly Morten, has been consulting before presenting the drafts. And it also shows that we do agree that the papers follow the Statute, they don't go beyond.

I've been particularly struck by the endorsement of the fundamental proposal because it is quite fundamental that it should be prosecutorial policy to investigate those who bear the greatest responsibility for the offences; for example, the leaders of the State or organisation.

And there's been wide agreement on your complementarity proposals. Yes, there have been very many comments on complementarity, but they've been constructive. I do agree with those who have said that complementarity was not put in the Statute in order to safeguard national sovereignty. That's really an irrelevance. It was put in because the taking of national jurisdiction over crimes is the best way of dealing with crimes if the national jurisdiction is genuinely available.

And incidentally, I do think it's dangerous to say, as page 4 of the paper does, that the unwillingness of the State is a subjective criterion. As Richard Dicker pointed out yesterday, there are objective tests here, and it may be better to avoid the distinction between subjective and objective. The Statute doesn't use those words.

There's your much-quoted statement that the success of the ICC

should not be measured by the number of cases that reach the Court but by the absence of the ICC trials as a consequence of the effective functioning of national systems. Bill Pace criticised that yesterday; indeed, he was quite grumpy about it. Well, of course it is an exaggeration, and maybe it can be redrafted, but we all understand what it's directed at; and it really is very important, the strong aspirations that the national jurisdictions will operate effectively and that the ICC will have some influence towards that.

My second remark. Though obviously lots of tasks that have been suggested for you to do, Mr. Prosecutor - some of the suggestions are of new tasks and some are of a more extensive carrying out of your mandate - you will have to judge what's proper for you to do. All I would mention is that we often talk about managing expectations for the Court and how important that is in order to avoid disappointment around the world. I think as a part of managing expectations, we mustn't raise them by suggesting that you do become a general Mr. Justice for the whole world. But there are obviously many tasks that you will need to do as the necessary carrying out of your mandate.

My third remark. There is clearly an enormous amount of work for your Office to do in these early days, not least to review the Regulations and the paper as a result of today and yesterday, and as a result of the written comments that will no doubt be put in. I think that everyone would like to see the first investigation begin as soon as possible, but I guess that most if not all of us here would share the remarks made by Bill Pace yesterday, that it's better to get things right than to get it wrong because it's done too quickly.

Mr. Prosecutor, it is clear that everyone has thought this to be a very valuable exercise indeed and everyone has been tremendously pleased by the transparency here. I know that you won't be able to take

on board every single suggestion, but I think it would have been valuable for you to at least know all of the concerns that have been expressed.

Very good luck.