

OTTO TRIFFTERER: Referring to what has been said yesterday, I would like to look at the draft papers and see if there is anything which may be improved.

Looking at page 3 of the draft paper on some policy issues, it writes at the end that: "Consequently...the Chief Prosecutor must consider whether the case is admissible under Article 17 of the Rome Statute..."

Looking at Article 17 of the heading, it may be justified too, formulated in this way because the heading says "Issues of Admissibility." But looking in the text of Article 17, it is vice versa. The Court and thereby in advance the Prosecutor has to decide if a case is inadmissible as it is read that "... a case is inadmissible where..."

I would like to draw the conclusion that first, *prima facie*, all the cases are admissible not with the Court but have to be sent to the national jurisdiction unless there is any concrete suspicions that one state may be unable or unwilling. But *prima facie* all the States Parties are obliged to fulfil their duty to exercise domestic jurisdiction. Therefore, the Chief Prosecutor should not think of if there may be any signs that they could not be willing or unable. To, vice versa, turn the problem it's important that right from the beginning the issue comes to the national level, because recalling what has been happening in Nuremberg and also said yesterday in this hall, it is the question of how to spread the idea that this is wrong worldwide, not accepted, and potential perpetrators may be prevented from abusing their power. It is necessary to bring the perpetrators back to the place where the crime has been committed.

Now, with regard to this "where the crime has been committed," I refer to page 5 of the draft policy paper, "Global Nature," and the global nature reads in the second last sentence: "... thus allowing" a court "to concurrently handle several situations while respecting limited

resources."

In the Statute it is provided that the Court may sit worldwide. I refer to Article 3(3) and Article 4(2) of the Statute, and I recall the decisions of the ICTY that this Court was not willing, though able, to sit outside. But the difference between the Court now is that it is acting worldwide while the ICTY and the ICTR had restricted, limited territorial interest.

Having taken into consideration that we are developing effective preventive communication programmes, we should nevertheless take into consideration that the knowledge about the ICTY and the ICTR was very, very limited worldwide. At the beginning, not even in all parts of the former Yugoslavia people were aware that such a court exists, and the preventive effect, if at all, can be increased only if we spread the news that potential perpetrators have to be careful.

So I would like to ask you to consider these two aspects. And since I still have some time, I can go to page 8 of the same draft. It reads that at the end of the section b) in the fourth last line: "... Office of the Prosecutor, its openness to governments, victims and witnesses..."

Yesterday, the non-governmental organisations have been mentioned quite often. Here they are not. I don't think it would do harm if we say "as well as non-governmental organisations," because they are those who most probably give more valuable information than is expected to come from individuals or even from witnesses and victims, because they can evaluate, assess in a certain way the importance of the information that may be received.

Now, if my time is over, I just would like to have one more comment. I mentioned it yesterday, of course, but not in the due effect. The Prosecutor should act quickly, as it was said yesterday, efficiently, and secretly as far as needed and justified to act secretly. This may be

because of the evidence or in case of the possibility to keep an arrest open. But as soon as the necessity to keep secretly is over, I think he should be not only monitored internally but go to the public.

This is all my time, and thank you very much.