

DARYL MUNDIS: Mr. Prosecutor, I echo the comments of my predecessors in congratulating you and also in welcoming the opportunity to have such a forum and to be invited to speak here.

My name is Daryl Mundis. I'm a trial attorney at the International Criminal Tribunal for the former Yugoslavia, and as with my colleagues from that institution, I'm of course speaking in my personal capacity.

I think it's very important in a prosecution office, particularly one involving serious international crimes, that policies are in place well in advance of the time when you begin your work. I think the process that you're undertaking in terms of consultation is an important one, and I think that this process should lead to written policies and practices which should avoid some of the particular problems and missteps that characterise the early days of the ICTY and ICTR and which hopefully your Office will be able to avoid.

When I reviewed the topics for this seminar, I felt a bit like one of my children in a candy shop. There were so many interesting topics to choose, but I decided I would speak a little bit on the issue of measuring the preventive impact of the Court. The more I thought about it, however, it occurred to me that measuring the Court's preventive impact was not nearly as interesting as potential policies that would give effect to the Court's preventive impact. So what I'd like to do is talk to you very briefly about some ideas in terms of setting policies that would lead to the Court or your Office having as great a deterrent effect as possible.

Now, this is a topic that is a bit fraught with danger because, as at least one of my predecessors, Nico, has mentioned, deterrence has not been particularly successful as a policy goal of the international criminal tribunals, the ad hoc tribunals. He pointed to Srebrenica. I

also will point to the example of Slobodan Milosevic and the fact that the ICTY was in existence at the time that he unleashed mass murderers in Kosovo. Similarly, deterrence in an indirect capacity had little or no effect on the situation in Rwanda where the perpetrators there clearly did not imagine that the international community would duplicate the ICTY in terms of establishing an international criminal tribunal to cover them.

I think it's important that you have outlined and articulated that the success of the Court may not be judged by the number of cases, and previous speakers have spoken on that. I simply reiterate that. Of course, this is not to suggest that the Court must not be prepared to step in and bring such perpetrators to justice in the event national courts prove unable or unwilling to act. I do suggest, however, that there is a twilight zone when national courts should begin functioning but before it is absolutely clear to us whether they are unable or unwilling to do so, and I believe that it's in this penumbra that the Court's maximum deterrent power may actually lie.

I think it's important, in terms of trying to come up with policies that will have a deterrent effect, that we also keep in mind that time perhaps may be of the essence, and particularly again the Rwanda context will demonstrate that whereby nearly a million lives were lost in a hundred days. There may be situations where your Office has to act very quickly in reaching determinations as to whether the local courts are going to do anything, and that's why I believe it's particularly important to have prosecution strategy and policies in effect that are geared towards having deterrent effects with respect to subsequent events, because it might not be possible, once you have become seized of a case, to have a deterrent effect with respect to that crime base simply because the crimes may be over. However, policies might be

implemented that would permit you to use the first case as an example of the Court's potential for deterrence in future conflicts.

And let me, without attempting to give any specific policy recommendations, just a few ideas on this. Also, I think, to be the third speaker this afternoon to raise the words of Teddy Roosevelt, I think if we get to the point, Mr. Prosecutor, where you have to use your stick, you will probably have to use a very, very large stick. For that reason, I would suggest that you consider policies at the prosecution strategy, when Book 3, Part 4, is being drafted, that permit you or that anticipate that you will go to the potential target country with a draft indictment in hand, with a dossier of evidence in hand, and either meet with the senior leadership of that country, whether it's the justice minister, the head of state, or the senior military officials, present them with this material. Your policies, I would recommend, have a set number of days in which you would give them to act. In the event that they don't act, that will of course be evidence that they have been personally put on notice and may involve them being personally targeted for prosecution by your Office.

I see my time is up. At the same time, I will strongly suggest that as you seize those individuals with this draft indictment or indictments and compilation of material that your Office has put together, that you also, in order to give effect to the greatest potential deterrent policy, that you make that information available to the United Nations and that you also very publicly indicate what it is you are doing so that in the future potential criminals will have no doubt whatsoever that when it comes time for your Office to act, that you will do so decisively.

Thank you.