

MOHAMED OTHMAN: Thank you.

My name is Mohamed Othman, former Chief of Prosecutions of the Rwanda tribunal and the UN administration in East Timor.

I just want to make two preliminary remarks and five punctual comments on the draft paper.

The first one. Of course, the ICC Statute places accountability in its rightful place, but at the same time, within the UN system, there is an increasing recognition of accountability. So I think that we can depend on both accountability within the ICC Statute but also within the total UN system. And I can cite those two examples: Security Council Resolution 1479 in relation to Cote d'Ivoire, and in relation to Iraq is 1483. Of course we can discuss the models of accountability, but I think that there is an increasing recognition of accountability as a norm in international law.

The second preliminary observation I want to make is that definitely the draft paper echoes the Statute on the prerogative of states on the complementarity, and I think the next step really is to look at the best practices and the strategies. And I see the draft paper has recognised the "decollage", I think is a better French word, the bridge between the first option which is state action and then the trigger mechanism. And I think one has to narrow that bridge if, really, we must have the expectation of rendering justice in the speedy time that is needed.

My five specific comments. One is that I think, although referral is provided for in the Statute, the expectation of referral by States Parties of the UN Security Council, that it is desirable, would be whole-hearted coming, I think; in the spirit that, as cooperative as the draft paper you have presented should not water down the right of initiative of the Prosecutor's Office. And I see this as part of an

unfettered exercise of independence, that is, the right of initiative; that is, the Prosecutor's Office must have what we call the spinning ball in terms of the whole process.

The second aspect is with regard to accountability; I think the assumption the international community consists of functional national systems, I think, should not be overstated. I think experience has it very often that co-crimes for which the Court addresses accountability invariably takes place in collapsed situations, conditions of inability, because, as we say, unwillingness is more sophisticated than inability. And I think that the respect of national sovereignty in some of these transitional situations might require a shared caseload between the international and the national. And I think an early consideration of this shared caseload, the modality, the politics of it, I think would be helpful, perhaps.

The third point I want to make is that, of course, the ICC is not being conceived as the dragnet of each and every accountable individual. I think accountability, as outlined in the draft paper, is for the unfortunate few, those with the greatest responsibility. But of course the next question is, what is your solution? There are many aspects one can talk about, those with the greatest responsibility as a way of accountability, but I think that some key words are "full accountability" because the prosecution of a few by the ICC and none by a national jurisdiction in a situation of mass human rights violation does not help impunity. So I think that this question of designing or deciphering or profiling those with the greatest responsibility must take into account full accountability, especially in situations of transitional justice.

Two other comments. One is that the exercise of independence by the Court and the Prosecutor, and the complementarity I think definitely involves the two duties that you have mentioned in the paper: monitoring

and assessing state action. I think these are very straightforward duties. But we know from human rights regimes the sensitivity sometimes of monitoring. I mean, I know also from the election processes in Africa, for example, just the word "observer" has sent some people packing in terms of observing national elections.

So the issue is: Are you devising a system of having accountability inspectors or having monitors or observers; and how that will work in terms of the national perception of the intervention of the Court.

And then my final word is that, of course, the draft paper gives one example of the kind of assistance that the Office may give to national systems, which is sharing of information. And I think this is helpful. But in many situations it is not only information. Many national systems would require technical assistance, and this is both in the legal field, in investigations, and so on. So it's a much wider responsibility, and I say that has both financial and resource implications.

Thank you.