

SUSAN LAMB: I would like to thank the Prosecutor and his team for the opportunity to address you today and to add my voice of commendation to such a systematic and thorough and well-thought-out approach to these matters in advance of taking steps in this area. I'm sure in times this will yield very, very good results.

Within the broad framework of the seminar topic of today, I'm going to focus on two issues in relation to "Preparing to react immediately and effectively," and secondly, interaction with NGOs and other external bodies.

In my view, to preserve the operational independence of the Office of the Prosecutor and to ensure that material is collated and received in a manner that is usable ultimately for the ICC Office of the Prosecutor, it would be necessary for the Office of the Prosecutor to set its own priorities, parameters of action, and *modus operandi*. The guiding principle in this regard should be, therefore, in standard operating procedures and requests for assistance to enable the Prosecutor, where necessary, to maximise the involvement of its staff in the implementation phases of this.

The second area in terms of interaction with NGOs and other external bodies, in my view, is a golden opportunity to enhance the capacities of the ICC Office of the Prosecutor in order to call on the expertise and the powers of bodies external to the OTP to enhance the mechanisms already available to the Office of the Prosecutor.

I will focus on two key areas here. Firstly, supplementing Part 9 of the Statute on State co-cooperation in terms of memoranda of understanding and other informal arrangements; and secondly, I will provide some comments on mechanisms for arrest and surrender of accused. Clearly not all of these comments are equally pressing in terms of priorities at this point in the ICC-OTP's operation.

In terms of enhancing Part 9, mechanisms of cooperation, clearly many speakers have addressed already the importance of implementing legislation and a proactive approach to that from the outset. I would simply stress at this point the injunction in Article 99(1) of the Statute to ensure that the States Parties, that requests for assistance should be carried out, to the extent possible, in the manner specified in the request for assistance in the first place, to the extent it is practicable, for the OTP to have an input into implementing legislation that is ongoing at the moment, an approach which favours discretionary clauses in such implementing legislation so as to admit maximum freedom of manoeuvre to the Office of the Prosecutor on the territory of States Parties may bear fruit. In general, this requires seeing Part 9 as merely a minimum threshold of obligations assumed by States Parties but of a part which doesn't preclude the assumption of more extensive obligations by States that may in principle be more cooperative with the ICC-OTP.

The second point I'd like to address is the powers of the Office of the Prosecutor under Article 54(3)(d) to enter into agreements or agreements not incompatible with Part 9 which may be necessary to facilitate the cooperation with States, international governmental organisations, or persons.

This would appear to permit more informal modes of cooperation through mechanisms such as memoranda of understanding and exchanges of letters which may permit added advantages of flexibility and speed of operation being as they are outside ordinary diplomatic channels and able to being activated on a notification basis. It would also permit arrangements to be reached with non-States Parties or bodies external to the Office of the Prosecutor so the nascent Office of the Prosecutor is not hidebound by a lack implementing of legislation or may cooperate or

may request assistance immediately with non-States Parties or parties whose implementing legislation, for various reasons, is a long way off. Clearly a selective or targeted approach to such mechanisms may be necessary given the vast array of States with whom they could be negotiated, and in all cases, agreed standard operating procedures and template forms of such agreements in advance may prove to be useful.

I will turn briefly and finally to issues of arrest and surrender.

Similar to the assumptions underlying the ICTY at its outset, the ICC Statute very much envisages that arrest and surrender will be carried out by States Parties. Our practice, however, has proved this to be rather optimistic in terms of the reality of how such mechanisms were carried out, and in time, it may be necessary to examine closely the ICTY practice of negotiating either bilateral memoranda of understanding with particular peacekeeping forces willing to act on your behalf or possibly negotiation with the UN Security Council directly at the time peacekeeping mandates are formulated.

At this point I will close, and I'll thank you again for this opportunity. Thank you.