

JOSE-PABLO BARAYBAR: Mr. Prosecutor, my name is Jose-Pablo Baraybar. I'm head of the Office of Missing Persons and Forensics in Kosovo. I'm here today to give my personal opinion.

For the last seven years I have worked as a senior forensic scientist of the tribunals, both in Rwanda and the former Yugoslavia, and I would like to, based on that experience, give some recommendations to your Office.

The application of forensic science is in the prosecution of serious human rights violations, such as genocide and the war crimes of recent date. However, for some time forensic sciences, particularly forensic archaeology and anthropology, have been successfully applied to investigation of human rights violations in the courts and in commissions, commissions of inquiry by governments or independent or non-governmental agencies.

While one may be inclined to state that the use of forensic sciences in the those contexts has been ad hoc rather than systematic due to the role played by those bolstering investigations, the situation was reversed when the Rwanda tribunal and ICTY specifically decided to use forensic science as a much larger scale and incorporate them into what we may call human rights enforcement as opposed to human rights reporting that was happening before.

By the end of '95 the first large-scale operation in Rwanda was set in motion, and during the years that followed further work was taken in Bosnia, Croatia, Kosovo, under the auspices of the ICTY.

Despite that, there is a number, I would say, of mistakes that were committed, a number of successes as well, but I would like to concentrate on pointing out some of these mistakes in order to try to avoid them now in the International Criminal Court.

I would like to concentrate specifically in the case of Kosovo

that I know better and with which my office is dealing at the moment.

During '99 and the year 2000, the ICTY's emphasis in Kosovo was an issue of numbers. To demonstrate that a crime was systematic, widespread, large-scale and all the rest of it, the priority was focused primarily on examining or performing post-mortem examinations, in this case, of as many bodies as possible and relying on circumstantial evidence or even single testimonies to support authorship of the crime. As a consequence, a large amount of information, alas not structured, was collected.

In addition, a humanitarian tragedy was inadvertently caused by not undertaking the identification of the victims that were examined. Future attempts to collect forensic evidence of serious crimes, such as genocide in this case, should wait to count; that because of its characteristics being systematic, widespread, and in high numbers, it must be treated both as a crime and as a humanitarian problem.

The ICTY investigation between '99 and 2000 left behind a total of 4.019 bodies exhumed, of which only 50 per cent were identified. In addition, the non-identified bodies exhumed in '99 by gratis teams used by the tribunal were generally reburied in locations, to date, unknown to the tribunal.

Based on this I would say that forensic evidence, when used in investigations of violations of international humanitarian law, should be considered an integral part of building a case. In other words, it's potentially useful and should be considered at the onset while assessing the circumstances of the offence, characteristics of the crime, et cetera. Only at that stage it should be determined whether forensic evidence may be useful or not, keeping in mind that obviously the need to collect forensic evidence may arrive late in an investigation.

The only way to assess the need for forensic evidence in order to

devise strategies to make it available in a given case is through the creation of a scientific advisory unit. Such unit should be attached to the chief of investigations and it should provide the Prosecutor with the relevant information for him or her to ponder what impact that evidence may have in each specific case. If the outcome is positive, the unit should be responsible for the implementation and final outcome of the operation. Considering the ICC will have much more jurisdiction than ad hoc tribunals such as Rwanda and ICTY, it is important to determine what are the basic requirements for such a unit to be viable.

Therefore, I would allow myself to make the following recommendations: First is the creation of the advisory unit, that the unit should be autonomous and attached to the chief of investigations; that the unit should carry out assessments on behalf of the Prosecutor to determine the amount, quality, and characteristics of forensic evidence that could be collected. Because the investigations of the ICC will not be restricted to one geographical area, it will need to survey the presence of local technical capacity in the areas or neighbouring areas in which it wishes to intervene. The unit should also assemble a comprehensive directory of competent professionals to be engaged in an ad hoc manner in forensic investigations as the need arises. The ICC should dwell on local resources imposing external standards. And finally, the ICC should calculate the cost benefits of a forensic intervention prior to undertaking one which may satisfy the needs for the prosecution but cause humanitarian damage.

Thank you.