

GORAN SLUITER: Good morning.

Goran Sluiter from Utrecht University, and judge at the Utrecht District Court.

I have only a few remarks in relation to the two documents produced. I would like to start with the draft policy.

In this paper, considerable attention is paid to the principle of complementarity. Whether or not the Court has jurisdiction is an equally important question and, in this respect, I would like to refer to draft Regulation 7; however, in the draft policy paper the jurisdictional obstacles have not been discussed to the same extent as the complementarity principle. Yet I offer two issues related to the jurisdiction on which a transparent prosecutorial policy would be useful.

The first is Article 12, section 2, sub (a) of the Statute. What are, according to the Prosecutor, the criteria to determine whether or not an ICC crime has occurred on the territory of a state party? The second is Article 11 of the Statute, temporal jurisdiction; how to determine whether or not a crime has been committed prior to the entry into force of the Statute.

These are only two examples. Another jurisdictional question on which one may expect, sooner or later, the Prosecutor to take a position on, although this need not be in the policy paper, is UN Security Council Resolution 1487 and whether or not it has the consequences envisaged in Article 16 of the Statute.

The draft Regulations and draft Code of conduct contain interesting and very useful provisions. I could not find in the text a clear provision clarifying which duties are applicable only during the term of office and which duties continue to apply after a person has left the OTP. Especially with respect to confidential information such as protected witnesses and national security, it is of vital importance that

the obligation of confidentiality remain in force after the person has left the OTP.

The scope of application of draft Regulation 2 seems, in this sense, too restricted. A duty of confidentiality applicable both during and after term of office should, in my view, not be absolute. Giving effect to Article 93, paragraph 10, of the Statute, the ICC Prosecutor may not, in a given situation, object to a former OTP employee giving testimony in a domestic court. Here one could envisage the need for permission by the Prosecutor to give testimony. If the testimony concerns privileged information on account of national security, the permission of the state concerned is also required.

Respect for national sovereignty also justifies, in my view, a provision in respect for national laws and regulations when OTP investigators conduct so-called on-site investigations. National laws should be observed by OTP investigators even if they enjoy immunity from these laws. In fact, the immunity only concerns a state's adjudicative and enforcement jurisdiction. Again, these duties should not be seen as absolute. OTP investigators cannot be considered bound by domestic laws of Parties in clear violation of the Statute.

These are my comments. I'm aware I'm well ahead of time. Thank you for this opportunity.