

KIM PROST: Thank you very much, Mr. Prosecutor.

I'm Kim Prost. I'm the head of the Criminal Law Section at the Commonwealth Secretariat. In my former life, I was on the Canadian delegation for the negotiations of the Rome Statute, particularly focused on Part 9, so I'm going to address some comments on that from both those perspectives. And I thank you very much for the opportunity to contribute to the process.

My points are very practical and technical, little picture issues perhaps but, in the building of the structure and operation for the Office, may be of great importance in terms of fundamental functional issues.

The point has been made by previous speakers of the importance of developing an informal contact network, and I simply wanted to highlight the important role that that can play in the effective operation of Part 9. But I'm sure I speak for my colleagues who practice in the international cooperation field that nothing can replace the personal direct contact between prosecutor to prosecutor, investigator to investigator. That's critically important if it's going to operate effectively, a cooperation regime. That's particularly the case because many of the problems that will be encountered in cooperation with the vast majority of States won't relate to an unwillingness or an obstructionist. They will relate to legal and logistical problems that invariably arise in gathering evidence and effecting surrender so that that work can be incredibly important to break through those particular issues.

It's also a very important, I think, that that's carried out sooner rather than later, the development of those contacts, so that you are off the ground running, if you will, in the sense that when a problem arises, you have the network in place. And it can be perhaps useful to use some of the existing networks that are already out there such as, for

example, the secretariat. We have a contact network. The UN Office of Drugs and Crime has a contact network, and of course my friends at the AP, who will speak afterwards, also would be useful in that context.

The second point, just very briefly, the database that was mentioned by the Ambassador earlier. I think that's a very important point, having a database of the implementing legislation, because it's very useful to identify where problems might be encountered in terms of cooperation and how to work around them. It will also, just by the request coming from the Prosecutor's Office, might be a subtle reminder to those States that have yet to enact that implementing legislation.

Finally just on Part 9 generally, as a compromise text, of course, no one is ever happy with this at the end and there are certainly issues with Part 9, but it has a great deal of flexibility, and the important thing will be to focus the practice in the Office on maximising the benefit of Part 9. And I would suggest that perhaps in the policy paper or through another vehicle you could have a highlight of the practice relating to Part 9 that would focus particularly on formulating the requests in a way that you can get the evidence and get it in the manner in which you need it for the processes and how to formulate them to get the most effective result.

Secondly, there has been criticism, of course, of Part 9 because it's a cooperation scheme. And while there are downsides to that in terms of the limitation on direct access for the Prosecutor and the investigators, at the same time the upside is it's a means by which you can share the burden of the investigative tasks, because while there will be some aspects of an investigation you'll want to be dealing with directly, as directly as possible - and that's very possible under Part 9, that can be done - there's also aspects where you'll be quite happy to have a cooperating State carry out the investigative action and

so that there can be again a practice that emphasises the usefulness of the cooperation regime as set out in Part 9.

I had some additional comments on the Regulations, the draft Regulations, as well as some more detailed technical points, but I'll save those for written submissions that I can send in afterwards.