

RICHARD DICKER: Yes. I am the Director of the International Justice Program at Human Rights Watch, based in New York, and have been following the negotiations and the establishment of this Court for a number of years.

First, I should say a word of appreciation in regard to this process and the exercise itself in the hope and belief that indeed it is reflective of a style of work of the Office of the Prosecutor of the ICC that will be borne out over the years; both in terms of the format, the process - this open meeting which I regard to be unique and quite inspired - but perhaps more importantly than the process, what I find as an underlying theme in the draft policy paper and the Regulations as well; that is, a methodology that, as Book 1 of the Regulations clarifies, is aimed at establishing transparency and consistency in decision-making in order to enhance respect for international justice.

I think, sir, that indeed is a kernel or a cornerstone on which to build your Office and best enable it to undertake the enormous challenges it has ahead, indeed as a sound and principal basis of all work.

But time is short and I'm not here to flatter you or praise the good preparatory work that has been done. You've asked for comments and I'm glad to respond.

Specifically, I recall quite clearly, and others in this room who were more engaged than myself will recall as well, that complementarity was discussed at the very, very first of the Preparatory Committee meetings for the International Criminal Court in conference room 4 at the United Nations in April 1995, and then codified in a very important Preparatory Committee session in August of 1997, where what was Article 17 was agreed on.

With that, and the inclusion of other articles, I want to make the initial point that I am completely confident that the complementarity regime, as embodied in Article 17, Article 18, Article 19, is fully respective of national authorities and the sovereign states that they serve. So I don't see that as a worrisome or particularly sore point with the faithful application of the Statute.

I think that the issue that I want to focus most on is the reference in the draft policy paper to the unwillingness factor that is correctly characterised as subjective, as distinct from the objective inability of national authorities to carry out investigations and prosecutions. Indeed, because Article 17 enumerates issues of intent, the intent to shield the individuals from criminal responsibility and intent inconsistent with bringing someone to justice --

[Note on screen read "1:00 remaining"]

RICHARD DICKER: That's quite helpful. In any case, time flies when one has fun.

My point, sir, is that in the complementarity book that has yet to be written, it is absolutely essential for that book to contain as many objective indicia of unwillingness. Based on practice that we've been involved in very specifically, that of the state of Columbia in regard to its Office of Attorney General, we have not yet found the smoking gun memorandum whereby the Attorney General says, We will dismiss all cases against alleged paramilitary offenders, but we have consistently found objective conduct by members of that office that certainly suggest, if not allow, a reasonable inference of unwillingness.

My point, in conclusion, is that as this complementarity section is fleshed out, it needs to take that subjective intent and try, not in an exhaustive but in an illustrative list, consistent with transparency and rationale decision-making, to assist your Office in gaining an

objective set of criteria to better gauge unwillingness as it arises in the real world.

Thank you.