

ANTONIO CASSESE: Thank you, Mr. Prosecutor.

I will briefly address two points: one with a more practical dimension; the other one is more technical.

Mr. Prosecutor, you may feel that for the time being, at present, these points are really minor, but to my mind they are likely to become quite important in due time. Both are related to the Prosecutor's task to assess whether states are unwilling or unable to prosecute and investigate.

My first point deals with Article 18, paragraph 5, of your Statute which provides, as you know, that "when the Prosecutor has deferred an investigation to states' investigating authorities, the Prosecutor may request the state concerned periodically to inform [you] of the progress of the national authority's investigation."

All right. Now, although this provision, of course, does not specify the state authority to whom you must address yourself to obtain the necessary information, I assume that it will be for each States Party to designate a national authority for this purpose. Judging from past practice, particularly with the ICTY, this national authority is likely to be a senior official in the Ministry of Justice of the state concerned.

Now, to my mind it would be more helpful and efficient if you could instead informally turn to a senior state prosecutor, possibly in the capital city of the state concerned. Of course, this should be done with the explicit or implicit consent of the state in question.

In addition, you, I think, would have formally to request information from the officially designated central authority. However, and this is my point, experience has shown that informal - informal; I stress the word - informal and rapid contacts with national prosecutors and, where they exist, investigating judges may prove extremely helpful.

In this way you could obtain more quickly and efficiently the information you need. To be sure to take a decision on whether or not the state is able and willing to investigate and prosecute, you may have to wait for the formal information coming from the official liaison officer designated by the state in question.

However, the establishment of this sort of informal global network of national prosecutors and investigating judges, prepared to cooperate with you with the consent of their own national authorities, might prove helpful, I think, to avoid much bureaucracy, red tape, as well as undue delay.

Now, let me come to my second point. The second problem I wish to address relates to a question which, to my mind, is extremely interesting, probably because of my academic background, and it's a question left unanswered by the drafters of the ICC Statute. Before the question of whether a state is willing and able to prosecute arises, there may crop up a preliminary question. More states may assert jurisdiction over a case pursuant to Article 18, paragraph 2, of the ICC Statute. For instance, in addition to the territory or state, the state of active nationality or the state where the suspect or the accused lives may all claim jurisdiction; therefore, we would clearly be confronted with what we call in our legal jargon a positive conflict of jurisdiction or competence.

Now, to avoid having to resort in such a case to the time-consuming procedure for the settlement of disputes between contracting states, that procedure which is provided for in Article 119, para 2, of the Statute, I think you might want to issue general guidelines on the possible solution of positive conflicts of jurisdiction. Of course this must be done with extreme care because there's a danger that states may feel that you interfere with state

sovereignty.

In addition, and this probably might prove even to be more important, when faced with a specific conflict of jurisdiction between two or more states, you, as the Chief Prosecutor, might wish to take upon yourself a sort of quasi-diplomatic role and endeavour to contact all the states authorities concerned. To those authorities you might propose a solution that is both, in your view, rational, consonant with the general principles of justice, and also conducive to the speedy conduct of investigations before national authorities. This quasi-diplomatic function is not provided for in terms in the Statute; however, it is not excluded by the Statute, so it is not contrary to the Statute. Therefore, I think it seems permissible that this function would be exercised by you in the interests of international justice.

Thank you.