

NICCOLO FIGA-TALAMANCA: Thank you.

My name is Niccolo Figa-Talamanca. I am the Program Director of No Peace Without Justice. I speak here in my personal capacity.

I want to pick up a little bit where Richard left off. We don't do human rights reporting as much as we do conflict mapping, which is exactly the type of information which is sometimes quite boring information; movements of people and closures of offices and movements of troops.

We spend a lot of time in the field. We're currently spending a lot of time in Sierra Leone. We spent a lot of time in Kosovo, and in the Kosovo work we have witnessed over and over again that massive violations of the laws of war do not occur when combatants do as they please, when military discipline breaks down, or when there is lack of supervision by the higher military officers. Those massive violations occur when the higher echelons of the regimes make a positive choice, a specific political or strategic or tactical decision based on a cost-and-benefit calculation.

And the calculation is that it costs less to rape, to kill, to loot in order to consolidate their power or acquire it, in that instead it would cost more to confront their opponents within legal framework, militarily if necessary, but within legal framework. Indeed, it would cost them their power.

Now, we believe that you have the opportunity and the ICC will have the opportunity firstly by encouraging national prosecutions to complementarity. Secondly, and we believe as a last resort, by undertaking investigations and prosecutions directly, the opportunity that you have is that of affecting that cost-and-benefit calculation; in a way, to remove from the many of options that the actors have in front of them the option of committing atrocities. If not removing them from

the menu, making it the most expensive item on the menu that they can choose from. And I think this is the opportunity, and this is as much as we can hope for.

Very quickly, what we believe can affect cost-and-benefit calculations of this type.

I think the mere existence of the ICC is not sufficient. We cannot forget that Srebrenica happened well after the International Criminal Tribunal for the former Yugoslavia existed, and in fact I think already it absorbed a sixth or a fifth of the United Nations budget. And that's the ICTY with the full support of the Security Council, including the permanent five, with UN troops on the ground in Bosnia - in fact, in Srebrenica itself. So existence is not sufficient.

Now, we studied a lot of times in the context of the campaign against the death penalty. It's not the severity of the punishment which creates the deterrent, it's the likelihood of being caught that can affect rational actors. So the primary question, I think, as we see it, is to create a situation whereby the credibility of the threat of international criminal action is able to influence the political and military decisions, the tactical choices made by senior commanders.

One way of increasing the credibility of the threat is the consistent - I want to say diligent, but more than diligent - the persistent insistence on complementarity and the obligation of states fostering the conditions for investigations of prosecutions to take place in country.

Now, there is a number of ways of doing this, and I think there is a whole range of options that you will have at your disposal, and I think those range from the offer to send a senior investigator to assist national investigators to work together to establish patterns of events that lead to massive violations, or sometimes lending entire

investigating teams.

The very presence, I think, of an ICC Office of the Prosecutor personnel, at the very least in a monitoring capacity but hopefully as an advisor, in an advisory role, can really be an effective stimulus to actual national jurisdictions, especially with the unspoken or sometimes well-spoken explicit threat that the ICC will take over if a investigation is not genuine. I call it "Speak softly and carry a big stick."

Now, investigations and prosecutions, in order to be a credible threat, we believe, should focus on those types of people whose decision-making counts in terms of what atrocities are committed. And the phrase used for Sierra Leone and now used in your paper is those who bear the greatest responsibility. But it's those who bear the greatest responsibility for conceiving, planning and organising campaigns that inherently involve massive violations of humanitarian law.

The prosecution of the shooters of massacres, and I'm sorry to say even the prosecution of a civil rapist platoon, however satisfactory for the public opinion and the media in the short term, does not deter those who make the decisions that a hundred, 200 such platoons be unleashed on the population.

Now, people ask legitimately, in a way, what happens to the middle managers of genocide? I think if you remove those who bear the greatest responsibility, you undermine the middle managers, and you remove the obstacle from the possibility of national courts to act. So the very decision to remove the leaders influences the restoration of the rule of law in the country, and that takes care of everybody else.

Now, as part of this, also based largely on field experience, I take the liberty of resisting two temptations. I will sum them up very quickly.

One of them is that of selecting a horrible atrocity and going up the chain of command to look for the leaders. You need to know what happened everywhere in order to make decisions. The second is to be even-handed. I hate the word. The UN can be even-handed; let them treat the victims and the perpetrators in the same way. The prosecutor and judge cannot be even-handed. Celebici shouldn't happen. The case in which somebody is being prosecuted in a national court and the ICTY goes there and borrows the case to show that it is prosecuting Bosnians as well as Serbs, that doesn't need to happen.

Thank you.