

Let me first thank very warmly the organizers of this important Conference for having invited me. Even more for having listed my name among the keynote speakers, though I am not so sure to be able to strike the proper keys or notes in my speech. I say this with cause because while I can be considered, with due indulgence, an expert in the area of comparative judicial systems at the national level by no means can I be considered such with reference to international courts of justice.

In doing my homework for this Conference I got very much entangled with the relevant literature and the debates held so far in the attempt to define the conditions under which a much hoped for international court of criminal justice could properly and effectively function: the scope of its jurisdiction, the definition of the internationally relevant crimes, court procedure, ways to ensure both that the court be independent and that it appears to be such (the protection of independence in both of its aspects being at the international level an even more crucial element of legitimization than at the national level). Those issues and others have already been dealt with by other speakers this morning. Furthermore some of the interventions we heard this morning and this afternoon - above all that of professor Bassiouni - have convinced me that it would be better to set aside what I had prepared and instead say a few words - within the time limit of ten minutes set for us by the president of our panel - on criminal initiative, meaning by this, both the investigation of the internationally relevant crimes and the prosecution in court of persons charged with having committed them.

In the morning session professor Bassiouni reminded us that since the end of World War II there have been as many as 200 conflicts and over one hundred and seventy million casualties, that the accountability mechanisms for such a staggering amount of victims have been few and feeble. These figures, as impressive as they are

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as an indicator of the dimensions of the possible caseload of an effective international court of criminal justice, are certainly not the only ones to be taken into account. As already remarked by other speakers, such a court could not be properly called a court of justice if it were not directed to effectively try the many crimes against humanity that are committed not only in the context of an armed conflict but also by the no less cruel repressive policies that dictatorial regimes often apply on a large scale.

The reports given so far have concentrated their attention on the characteristics and functions of the international court. Far less attention has been devoted to prosecution, though we all know that the prosecutor is the gatekeeper of criminal justice, that the judge is basically a passive agent and that without the effective functioning of prosecution criminal courts remain ineffective. Professor Bassiouni was kind enough to send me his report to the UN on the investigations conducted in former Yugoslavia on the crimes against humanity that have been committed there.

Such a report not only underlines the magnitude of the horrifying crimes that have been committed - vividly portrayed this morning also by Mr Cicak - but also the enormous difficulties encountered in conducting investigations and the staggering costs that they entail both in terms of human and financial resources. But the cost of investigations - as insurmountable as that may be - is not the only impediment to effective investigations on the international plane. Actually the conduct of accurate, effective investigations (conducted directly or supervised by the international prosecutor) pose a far more immediate challenge to national sovereignty than the activity of a remote court. If we take into account on the one hand those two difficulties and on the other the magnitude of the potential caseload, the need to define accurate strategies intended to protect and support a credible role of the international court of criminal justice becomes evident at least on two different accounts.

In the first place the need to carefully define and drastically circumscribe (at least initially) the crimes for which the court is competent. In the second place the need to define carefully and in a transparent way the priorities in conducting investigations and promoting criminal action to avoid possible suspicions or accusations, recurrent even at the national level in several democratic countries, that prosecution might be influenced by political considerations or that it may operate differently with regard to "strong" or "weak" countries. Obviously priorities cannot be left to the case by case definition of the prosecutor. They must be stated in general terms

by a politically accountable international agency (the Security Council? the UN General assembly?) or included in the treaties that establish the international court. This is not to say that the prosecutor should be given or accept binding directives on single cases. Whenever there is or there might be a disproportion between the resources available on the one hand, cases to be investigated and criminal initiatives to be taken on the other, the definition of priorities in general terms far from being detrimental to the independence of the prosecutor tends to reinforce it by lessening the level of discretion placed in his hands (the relation between prosecutorial independence and accountability is a very much debated issue even at the national level; so much so that it was one of the issues proposed for discussion at the last UN Congress on the Prevention of Crime).

Most of the preceding speakers have so far stressed the many difficulties that are to be faced for the establishment and proper working of an international court of criminal justice. I am afraid I have added more substance to their worries. Like them I do hope that they be overcome.

The Hon Emma Bonino with her usual determination has urged that the International Criminal Court be established within the next year. I fully share her motivations but at the same time I share also the worries expressed by her long standing companion of many political initiatives, Marco Pannella, who in his speech warned us that the real difficulties will arise after the Court is established.