

I should like to address myself to the issue of “trigger mechanism”, that is, the question of what, or which actors could initiate (or “trigger”) court proceedings.

This important issue is now dealt with in Article 25 of the draft Statute and is widely considered as one of its most significant provisions.

It is well recognized that, however well drafted its Statute, the proposed International Criminal Court can only hope to be effective if it attracts the support of a large majority of states. In order to do so, it must satisfy them that its operation will be as objective as possible, and reassure them in the face of existing suspicions that its procedures will not be implemented in a selective or manipulative manner.

That provision of the draft makes a distinction between the complaint procedure for the investigation of an allegation of the crime of genocide and the investigation of other crimes referred to in the Statute. With regard to allegations of genocide, the draft correctly requires that such a complaint be made only by a state party which is also a contracting party to the Genocide Convention of 1948.

With regard to complaints in respect of other crimes, Article 25 provides, again correctly, that only a state party which has accepted the jurisdiction of the court with regard to a particular crime should be entitled to file a complaint in respect of the commission of that crime.

Inevitably, then, the fact that complaints are to be filed by states creates a very real danger that the investigative procedure may be abused for political ends. It may be impossible to eliminate this danger entirely, but it could be greatly reduced by establishing somewhat more stringent criteria for the filing of a complaint than are currently proposed by the ILC draft. The current proposal, in paragraph 3 of Article 25, is hedged with reservations. Thus, the

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\* *Professor of International Law, Hebrew University of Jerusalem.*

complaint is required to specify the circumstances of the crime "as far as is possible" and is to be accompanied by such supporting documentation "as is available" to the complainant state.

In view of the severity of the crimes with which the Statute is intended to deal, one might expect a minimum threshold of information indicating that an investigation by the Court is warranted. It might also be helpful to require that the complainant state conduct an investigation itself, in so far as possible, to ensure that the complaint is well founded and to ascertain all available evidence in support of the complaint.

It has been proposed on a number of occasions that the Prosecutor should be empowered to initiate investigations *ex officio* or on the basis of information obtained from any source. Although these proposals reflect provisions in the Statutes of the Tribunals for the former Yugoslavia and Rwanda, the granting of such power to the Prosecutor is not appropriate in the case of a permanent Criminal Court. The Court is intended to deal only with international crimes of grave concern to the international community as such. Where no complaint has been forthcoming from any state, this would seem to indicate that the international community - in this case those states which have accepted the jurisdiction of the court in respect of the specific crime - has taken no interest in the prosecution.

An independent power for the Prosecutor to initiate investigations would also open the prosecution mechanism to allegations of politicization, and thus damage the credibility of the Court. In particular, a troubling distinction would arise between those complaints lodged by the Prosecutor (on his or her own initiative) and those which have the support of a complainant state.

I would also venture to suggest that the Court should not be empowered to accept *amicus curiae* briefs.

The establishment of an organ such as the Criminal Court necessitates a fine balancing act between the ideals and the practicalities. In certain cases it may be necessary to compromise on our most ambitious aims for the Court in order to achieve the widespread acceptance that the Court will require if it is to be effective. In striking such a balance, it seems there are two fundamental aims that must remain uppermost in our mind. The first is that the Court must retain a clear focus on the most heinous of international crimes. The second is the need to take every measure possible to ensure the objectivity and impartiality of the Court, and so encourage the community of states to accept this new organ as an integral and valuable part of the international scene.