

A

note from the Editor

Before the end of this year, a permanent world criminal tribunal - the International Criminal Court - will most likely come into being. Sixty or more States will participate in it. Its mandatory jurisdiction will be limited to future acts perpetrated on the territory of States party to the Court's Statute or by their citizens. The creation of this tribunal will close a gap in the international security system, even though certain major States and some countries which are the scene of ongoing armed conflict will not be covered. This issue of the Review contains several articles dealing with various aspects of accountability for international crimes and different forms of international or internationalized tribunals.

The future International Criminal Court will be called on to render judgment first and foremost in cases of genocide, war crimes and crimes against humanity, all of which constituted the core of offences prosecuted at the Nuremberg and Tokyo Tribunals following World War II. These international crimes are most often committed during armed conflict and have a direct bearing on respect for international humanitarian law. Whereas the absence of consensus over a definition of the crime of aggression did not prevent the inclusion of this crime in the Statute of the Court, acts of terrorism have been excluded from the catalogue of crimes over which the Court shall exercise jurisdiction, since agreement could not be reached on their inclusion.

Jelena Pejić's article reviews the issues and trends in combating impunity. No superior order can relieve the perpetrator of his or her own responsibility (article by Jacques Verhaegen). Special attention was paid in the Statute to providing adequate protection for witnesses

and victims (article by Luc Walley). A specific mandate such as that of the ICRC during armed conflicts, which needs to preserve its action through confidentiality, may even exempt certain witnesses from giving evidence (see the explanatory memorandum on this subject by Gabor Rona).

In contrast to the *ad hoc* tribunals for the former Yugoslavia and Rwanda, national courts will have primacy over the International Criminal Court (see the article on its legal nature by Sascha Lüder). According to this principle of complementarity (article by Oscar Solera), no country need fear a loss of sovereignty as long as its national judicial system does in fact prosecute the suspects. Unwillingness and inability to prosecute by national courts were key factors in the conclusion of the recent agreement between the United Nations and Sierra Leone setting up an international Special Court with the participation of Sierra Leonean nationals (article by Avril McDonald).

While the latter tribunal will have to operate on a shoestring, the internationalized justice systems in East Timor and Cambodia raise even more problems, as the resources of the internationalized domestic tribunals are even more limited (see the article by Suzannah Linton). The immense practical, personnel and financial problems facing them, and possibly obstructing even minimal efficiency and effectiveness, relegate grave legal problems to the level of comparatively minor concerns.

One therefore cannot help wondering whether alternative means complementary to traditional prosecution and justice should be further developed: truth commissions, lustration, reparations and local customary measures such as the *gacaca* may help to combat impunity and make those who have committed international crimes at least partially accountable (see articles by Laura Olson and Carsten Stahn).

The crisis provoked by the events of 11 September 2001 raises numerous questions and issues which often go beyond the subject of humanitarian debate. But the adequacy of international

humanitarian law is equally put into doubt. In its intervention before the United Nations Human Rights Commission (see under Reports and Documents), the ICRC has outlined some key elements which determine its position on the subject. The September 2002 edition, one year after the tragedy in the United States, will be devoted to the issues raised by “the war against terrorism” and its implications for humanitarian law and action.

THE REVIEW