

Preface

The second half of the twentieth century has witnessed the emergence in the international community of a new awareness of its responsibilities in situations which potentially affect international peace and security. In an increasingly interdependent and interconnected world, natural and artificial borders and barriers can no longer guarantee that a crisis taking place in one state or region will not have repercussions far away, in another region of the world. Thus, the population directly affected by those events is not limited to the people living in the eye of the storm. As global challenges call for global solutions, appropriate governance must be ensured through mechanisms established and functioning beyond the national or regional level.

From this perspective, the development of the concept of the international community's responsibility to protect populations has provided a practical framework to balance rights, obligations and responsibilities as opposed to traditional doctrines based purely on sovereignty of states. In essence, the debate on the role of law and justice in building and preserving basic conditions for international stability and security revolves around the scope of state sovereignty. It is also in this ambit that the traditional prerogative of sovereign states to exercise criminal justice at a legislative and jurisdictional level has been progressively eroded by the focusing on responsibilities attached to the states' authority rather than on the authority itself. In the lengthy and complex process of the building of international humanitarian and human rights law, this different focus has represented a historical shift in the centre of gravity from states to individuals, in order to balance interests protected under international law in times of peace and armed conflict. This change of perspective, from the prerogative of states to the rights of individuals, is reflected in an unprecedented attempt by the international community to prosecute the most serious crimes of international concern, with a principled shift from total impunity to accountability.

The concept of international criminal justice developed throughout this process thus defies traditional doctrines based on the principle of state sovereignty: the protection of populations from widespread and gross violations of human rights and humanitarian law no longer depends on a state's discretion, instead it is now a positive obligation incumbent upon sovereign states. In the event that they fail to comply with this primary obligation, it is for the international community to take over the protective role. This shared responsibility includes the establishment of rules and means to fight against impunity by carrying out criminal justice at the international level or with international assistance and, thus, to deter the further commission of the most heinous crimes of international concern.

As such judicial functions of the international community are based on the capacity to provide peace and security by enhancing the protection of populations, the role of affected individuals and communities has also progressively become more apparent and – with due regard to the particularities of criminal proceedings – victims' protection, participation, representation and compensation have emerged as crucial features in the most recent international criminal procedure.

This book captures the structures, functions and challenges of international criminal justice at a turning point in its experience, when occasional and limited forms of international or mixed jurisdictions have demonstrated their potential and provided solutions in certain situations, while understandably being unable to meet all demands. At such a critical juncture, when some

international and mixed jurisdictions are in the process of winding up their work, it is timely to address the issues of their legacy and of continuity through residual functions to be performed for many years in the future, as well as of the role of the permanent International Criminal Court.

It is widely understood that multiple experiences have contributed over time to the building of a system of international criminal justice. While the recent commencement of trial activity at the ICC has so far provided limited experience in terms of the implementation of a number of the Rome Statute's main innovations, substantive and procedural international criminal law provisions have been largely tested in proceedings and trials held for over 260 accused before the United Nations *ad hoc* or mandated Tribunals. This treasury of law and practice which is part of the legacy of the Tribunals will undoubtedly have an impact on the ICC as well as on national primary jurisdictions.

In 2010, at a time when the completion strategies of several international Tribunals will be well advanced, the ICC is to undergo the first review of its Statute, including a stocktaking of international criminal justice. The developments brought by the operation of other international jurisdictions will be a part of this process. The first Review Conference will follow after a seven-year experience of the actual functioning of the Rome Statute, as well as the last 11 years' experience of other international jurisdictions, since the 1998 Diplomatic Conference. The case law of the *ad hoc* Tribunals was indeed considered when adopting the Rome Statute, but at that time the Tribunals were still in their infancy and much has been achieved since then in terms of practices and policies.

These factual circumstances – law, practices and relevance of lessons learned to shed light on the future – represent the guidelines of this book: the system of international criminal justice is addressed in its dynamics rather than in its static structure, primarily focusing on substantive problems of a functional nature rather than on descriptions of the existing mechanisms, and placing the ICC and its future at the centre of possible developments of the system itself. For this reason, the review process of the legal framework of the ICC and the Review Conference of its Statute are strategically approached starting from the lessons learned in the experience of other international jurisdictions, as a reflection of the agreed inclusion in the review process of a stocktaking exercise which will also draw on the practices of the UN-established or -assisted Tribunals, including their case law on the subject matter jurisdiction.

Under this approach, the criterion informing the structure of this work is selectivity: while offering an overview on the whole system of international criminal justice, this book only deals with a selection of issues relevant to the experience of international jurisdictions and, thus, to better understand how the review process of the Rome Statute can be enriched by the lessons learned. Thus, the ability of practices to shape the possible contents for the review of the Rome Statute and its related instruments is at the core of the work. A holistic presentation of the Rome Statute system lies outside the scope of this work. For this reason, although some of its basic features are also dealt with, this is only to the extent that they appear to be relevant to an analysis of the experience thus far developed at the Court and in view of possible amendments to the law of the Statute. On the other hand, all issues related to the Review Conference of the Rome Statute are covered: this includes the concept and context of the review process, as well as the substance of amendments which appear either likely to be dealt with on the occasion of the first Review Conference or otherwise desirable in light of the lessons learned.

The Editor wishes to thank all contributors, who provide through this work their unique, invaluable and varied experience and expertise, as well as The Planethood Foundation, for its support for the project.