EDITORIAL

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The reason for publishing the proceedings of the ICC conference, held in Malta on 12 and 13 September 1997, in the fourth issue of the "Mediterranean Journal of Human Rights" is not simply a gesture of courtesy towards the Maltese institutions which, with their spirit of friendship and organizational capabilities, have ensured the success of this conference, conceived by the International Committee "No Peace without Justice" and accomplished with the collaboration of the University of Malta and the Foundation for International Studies.

We believe that these proceedings are actually a very significant scientific contribution to the keen debate that is taking place in political and academic circles on the institution of the ICC, particularly on its institutional identity and the ways in which it will function. These proceedings can therefore become an effective tool for all those who in the coming months, at various levels, will be giving their opinions and taking decisions on which the imminent creation of the ICC will depend.

The Malta conference has been attended by many jurists coming from almost all the countries of the Mediterranean, besides the politicians who, in these last years, have been working hard towards the creation of the International Court. In Malta, therefore, for the first time, a regional conference was held to discuss the Statute of the ICC, tackling technical problems which are still keenly debated within the *ad hoc* preparatory committee of the United Nations which is in charge of drawing up the Statute of the Court. The Maltese conference has projected an almost unanimous will to set up the ICC as soon as possible, but also a desire to give it a good start.

At present, since the age-old resistance of those States who up to now have opposed the institution of the ICC, because they consider it as a danger to the sovereignty of States which has been protected by international law for years, the problem is how to get the widest

approval possible for this new institution. It is important that the biggest number possible of States identify themselves with the activity of the ICC, and support its legal functions, by guaranteeing first of all the execution of the decisions that it will take. It is necessary, therefore, to find a point of agreement between what would be ideal for the protection of human rights and what appears to be politically possible.

Two principal problems have to be overcome, because they can threaten progress, or postpone the creation of the Court *sine die* and suffocate its role. These are the utopia of a Court which could do without the consent of the States concerned, and the *realpolitik* practiced by those who hold that the Court must act only when the States concerned decide that it could. The proper point of mediation between the different needs cannot consist of regulations which would divest the ICC of freedom of movement, rendering it hostage and at the mercy of the most powerful States. This would reduce this revolutionary act to an act of courtesy, to a symbolic act incapable of practical consequences. If this were to happen, if it were to become simply a promise of a revolution, then the creation of the ICC would give rise to dangerous frustrations and would constitute a step backwards in the culture of fundamental rights at the international level.

There are certainly deep-rooted convictions among politicians and jurists which are traditionally at the basis of the two opposing positions on the ICC. There is the idea, which has lately found strength in the many failures encountered by the crusades for human rights, according to which at the international level justice has never been and will never be equal for everyone, and that therefore the international Court, if it is not completely free from the individual States will only be a trap by which the strong States will impose their justice on the weak States. There is the other idea, upheld by some countries which, during the cold war enjoyed the right, through the power of veto, to paralyze even the most generous humanitarian initiatives of the United Nations, according to which a kind of justice which is too equal for all, will legitimate dangerous and growing interference within the boundaries of national sovereignty, and would therefore create great disorder in relations between States.

It seems to us that the message which emerges from the Malta Conference on this point is very clear. No world order can be founded on impunity, because impunity will sooner or later produce feelings of revenge, and will therefore bring political instability. However, no international justice can be established without the cooperation

of the States' institutions, which must necessarily collaborate. The ICC must have a subsidiary role with reference to the States, in the sense that it must constitute a request for supreme justice when the States do not want or cannot administer justice by the machinery they have at their disposal. The great issue at the centre of the debate which we are hosting in this fourth issue of the Mediterranean Journal of Human Rights is the manner in which this "subsidiary character" can be organized in practice, i.e. how the States must strive to interact with the ICC.