INTRODUCTION AND SUMMARY

This contribution attempts at indicating that in practice too little attention has been paid to the fact that international criminal tribunals, while some checks and balances may be present, do not operate in the same *trias politica* as domestic courts can.¹ For this reason, there is no executive organ, which, in the same way as a ministry of justice (or as in the Netherlands, an autonomous institution such as the Council for the Judiciary) takes care of all managerial issues necessary for the independent functioning of a court of law. In the two cases – the former Yugoslavia and Rwanda- in which the Security Council of the United Nations decided to establish an international criminal tribunal, based on Chapter VII of the UN Charter, it is at least formally possible to enforce policy. The arrears in contributions that existed and still exist in the financing of international criminal tribunals are just one example of how difficult the practice is. Against this background, it is understandable that the management

and budget of the tribunals in Sierra Leone and Cambodia, paid for out of voluntary contributions, is yet more complicated. To support both institutions there is oversight by and dialogue with a group of States, for example in a management committee or a group of interested States. Experience proves how difficult it is to distinguish between purely logistic and managerial issues and the administration of justice itself. To put it differently: many actors in the international field often do not make that principal difference.

This situation makes a prosecutor – and judges – less independent than he or she should be: it may well be so that a prosecutor has the pure and simple policy “to go where the evidence leads him”; in practice, he can only go as far in that direction as the voluntary contributions by the donor community to the criminal tribunal allow.

In addition, an even more fundamental problem may arise: the international community, often represented by the United Nations, wants assurances that international standards, such as human rights, due process, and independence of the judiciary, will be respected before any voluntary contribution is made. In some cases, the highly politicised situation in which a temporary tribunal has to be founded, often tailor-made to a specific situation in a specific State, can make this difficult: many of those involved have interests at stake which may stand in the way of their cooperation with independent adjudication. Due to this fact, international standards may be insufficiently met in the eyes of the international community, which then remains reluctant to contribute.

For these problems there is no panacea, but the new permanent International Criminal Court certainly can be part of the solution.

2  THE ORIGIN OF INTERNATIONAL CRIMINAL TRIBUNALS

2.1  The Desirability of an “International Judicial Authority”

During the second half of the last century, there have been approximately 250 armed conflicts, both international and non-international. These conflicts have cost more than 86 million non-combatant civilians their lives, most of them women and children, and have caused an accumulated total of refugees and displaced persons of about 170 million people. After World War II, in reaction to this human suffering, international humanitarian law developed rapidly and