

Decision by the International Criminal Tribunal for the former Yugoslavia concerning testimony by ICRC personnel

On 1 October 1999, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia issued an order lifting the confidentiality on their *ex parte* decision of 27 July 1999 that found that the evidence of a former employee of the International Committee of the Red Cross that the Prosecutor wanted to present in the *Simic and Others* case should not be given.

This follows a motion filed by the Prosecution on 10 February 1999, which sought a ruling from the Trial Chamber as to whether the former ICRC employee could be called to give evidence of facts that came to his knowledge by virtue of his employment.

In coming to their decision, the Trial Chamber noted the principles derived from the mandate entrusted to the ICRC by international law under the Geneva Conventions and Additional Protocols. In particular, the Trial Chamber focused on three fundamental principles that guide the movement, that is, impartiality, neutrality and independence, and considered that the right to non-disclosure of information relating to the ICRC's activities in the possession of its employees in judicial proceedings is necessary for the effective discharge by the ICRC of its mandate. In addition, the Trial Chamber took note of the ratification of the Geneva Conventions by 188 States.

As a result, the Trial Chamber came to the conclusion that customary international law provides the ICRC with an absolute right to non-disclosure of information relating to the work of the ICRC in the possession of an ICRC employee. Consequently no issue arises as to balancing the ICRC's confidentiality interest against the interest of justice.

The Trial Chamber thus decided that "the evidence of the former employee of the ICRC sought to be presented by the Prosecutor should not be given". Judge Hunt issued a separate concurring opinion.

ICTY PRESS RELEASE

8 October 1999