



ICRC

ICRC Statement

**Fifteenth session of the Assembly of States Parties to the
Rome Statute of the International Criminal Court**

The Hague, 16–24 November 2016

Mr President,

The International Committee of the Red Cross (ICRC) is grateful for the opportunity to address the fifteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC).

Given the ICRC's humanitarian mandate to protect and assist victims of armed conflict and in view of the continued suffering in armed conflicts today, it bears repeating that the High Contracting Parties to the Geneva Conventions of 1949 have the primary responsibility to respect and ensure respect for the Conventions in all circumstances. An obligation to respect and ensure respect for international humanitarian law (IHL) also exists under customary international law. In particular, States have the primary responsibility for investigating allegations and prosecuting alleged perpetrators of war crimes.

This obligation requires States to develop clear normative frameworks, strong judicial mechanisms and effective measures to ensure accountability in order to prevent and punish war crimes.

It remains the ICRC's view, therefore, that the effective implementation of the ICC Statute offers a valuable opportunity to put into place such measures to repress war crimes, put an end to the impunity of those who commit such crimes and promote greater respect for IHL.

The ICRC also remains fully committed to working for the faithful application, promotion and greater respect for IHL. If IHL is to serve the purpose for which it was designed, it needs to be effectively applied, implemented and – where necessary – enforced by States.

The 32nd International Conference of the Red Cross and Red Crescent, held in December 2015 in Geneva, adopted resolutions on several themes, including: strengthening respect for IHL; strengthening IHL protecting persons deprived of their liberty; protecting health-care delivery in armed conflict and other emergencies; and preventing and responding to sexual and gender-based violence in armed conflict, disasters and other emergencies. Notably, all these resolutions recall the obligation of States to respect and ensure respect for IHL.

Mr President,

The principle of complementarity, as enshrined in the ICC Statute, reminds us of the fundamental importance of effective national legislation and mechanisms to repress war crimes, including those defined in Article 8 of the Rome Statute.

The ICRC recognizes the important role which the judicial sector plays in applying, interpreting and enforcing IHL. State practice collected by the ICRC shows that national courts have delivered judgements addressing important IHL issues, such as the protection of the civilian population, the

protection of detainees and their fundamental guarantees, the protection of the red cross and red crescent emblems, the protection of cultural property, and missing persons and their families – to list just a few. These decisions are of paramount importance in the process of ensuring respect for IHL. In the context of its dialogue with State authorities, the ICRC has therefore been gradually expanding its interaction with members of the judicial sector – at both national and international levels.

Furthermore, through its Advisory Service on IHL, the ICRC continues to offer - to national authorities - legal advice and technical assistance on the domestic implementation of IHL, including on war crimes and on the application of the principle of universal jurisdiction. In addition, earlier this year the ICRC published the updated commentary on the First Geneva Convention of 1949. The commentary on Article 49 of this Convention contains a detailed explanation of the various methods available to States to incorporate war crimes in their respective legal system as well as valuable developments on the principle of universal jurisdiction and how States have implemented it in recent decades.

Mr President,

The ICRC has long-standing experience of conducting detention visits and actually visits some detainees being held by some of the States that are present at this meeting. In its capacity as the monitoring body for persons detained under the authority of the ICC during the pre-trial and trial phase since 2005, the ICRC continues to enjoy a good level of cooperation with all parties concerned. However, in order for the Court to uphold judicial guarantees and other obligations in the administration of criminal justice – including when it comes to the detention of individuals in its own facility – it must have adequate means to do so.

The ICRC reaffirms the right of all detainees to family visits, which are vital for their well-being, health and dignity and those of their families. It stresses the fundamental importance for persons detained by the ICC, often far from their countries of origin, to maintain regular contact with their families. The ICRC welcomed the establishment of the Trust Fund for Family Visits for indigent detainees in 2010, but regrets that adequate contributions to this Trust Fund remain wanting. We therefore underline the importance of the Assembly's decision in this regard and the need for the States Parties to support this fund, as well as to reflect on how the Court can meet its obligation to render the right to family visits effective. In a similar vein, the ICRC reminds States Parties of the fundamental purpose of the Trust Fund for Victims – as established under the ICC Statute – and the historic recognition that justice for war crimes, genocide and crimes against humanity cannot be delivered by retribution alone. The ICRC therefore urges States Parties to contribute meaningfully to this fund.

The ICRC also notes the enhanced efforts of the Court to promote greater support among States for Voluntary Cooperation Agreements. Sustainable solutions for the relocation, resettlement and protection of victims, witnesses, and individuals tried by the Court, acquitted and released, can only be found with the active participation of the States Parties. The States Parties – and the ICC itself – should ensure that all persons subject to the Court's jurisdiction are protected from any harm that may arise from the administrative functioning of the international criminal justice system.

On Agreements on the Enforcement of Sentences, the States Parties and the ICC must ensure that all those convicted serve their sentences in line with minimum standards for detention conditions and treatment, not only to set an example showing that all detainees should be treated with humanity and dignity regardless of their crimes, but also to live up to the lofty principles of respect for law and individual rights enshrined in the ICC Statute. The ICRC therefore encourages greater cooperation with States on the enforcement of ICC sentences. It is the ICRC's view that enhanced cooperation would help achieve, to the extent possible, equitable treatment for all those convicted by the Court, and limit and mitigate the negative humanitarian impact of detention from a familial, social, cultural and linguistic perspective.

Mr President,

The ICRC will continue to follow the work of the Assembly of States Parties to the Rome Statute of the ICC and the work of the Court itself, and remains available to support efforts to build an effective system for repressing war crimes and punishing those found guilty of such crimes.